Nos. 12,251 and 12,252

IN THE

United States Court of Appeals

For the Ninth Circuit

J. HOWARD MCGRATH, as the Attorney General of the United States, et al.,
Appellants,
(Defendants Below)

vs.

TADAYASU ABO, et al., etc.,
Appellees,
(Plaintiffs Below)

No. 12,251

and

J. HOWARD MCGRATH, as the Attorney General of the United States, et al.,
Appellants,
(Defendants Below)

vs.

MARY KANAME FURUYA, et al., etc.,
Appellees.
(Plaintiffs Below)

No. 12,252

BRIEF FOR APPELLEES.

On Appeals from Judgment of the District Court of the United States for the Northern District of California, Southern Division.

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No. 12,252

BRIEF FOR APPELLEES.

On Appeals from Judgment of the District Court of the United States for the Northern District of California, Southern Division.

STATEMENT OF THE PLEADINGS AND FACTS DISCLOSING BASES OF COURTS' JURISDICTIONS.

These are appeals by the appellants in their official representative capacities as agents of the U. S. Government from final judgments and decrees entered April 12, 1949 (R. 482), in the district court below in *representative class suits* in equity authorized by Rules 1, 20, 23(1), 23(2), 23(3), 18(a), 18(b), 19(a) and 19(b), R.C.P., which rescinded the appellees' written renunciations of U. S. nationality and the written approvals thereof by the Attorney General, declared appellees to be citizens of the United States and enjoined the appellants from depriving them of their liberty and of their rights, privileges and immunities of national citizenship. The appellants have not obeyed the judgment below but persist in those deprivations which now are extended into the eighth year since evacuation with characteristic perversity.

The District Court below had jurisdiction of the suits under the provisions of 28 USCA, Sec. 41 (1), now Sec. 1331, 28 USCA, Sec. 400, now Sec. 2201, and 8 USCA, Sec. 903, and this Court has jurisdiction to review those decisions below by virtue of the provisions of 28 USCA, Sec. 1291.

The Opinion of the Court below (R. 410-427) is reported in 77 Fed. Supp. 806 and the Opinion of that Court in the companion proceedings in habeas corpus appear in 76 Fed. Supp. 664.

Nature of suits.

The suits primarily are in equity to cancel and rescind documents, namely, written renunciations executed by the

appellees and the written approvals thereof executed by the Attorney General, that is to say, suits to rescind, set aside and cancel the documents *inter partes.* Original jurisdiction so to do is invoked under 28 USCA, Sec. 41 (1), now 1331 and 1332. The controversy arises under the 14th and 5th Amendments, the provisions of 8 USCA, Sec. 801 (i), and Secs. 316.1 to 316.9, inc., of the Nationality Regulations.

In addition the suits also lie for declaratory relief under the declaratory judgment statute, 28 USCA, Sec. 400, now Secs. 2201-2202, for they involve an actual justiciable controversy between appellees and appellants. The latter originally asserted and still assert the validity of the renunciations of all the appellees and that renunciation deprived and still deprives each of U. S. citizenship and of all the rights of national citizenship. Until the actual release of all the appellees from internment after the suits were commenced in the court below the appellants asserted the right to restrain all of the appellees indefinitely and finally to remove them to Japan under the provisions of the Alien Enemy Act as though they were alien enemies. They still assert the right to remove 292 to Japan. The appellees' freedom of movement and other rights of citizenship still are denied to them by the appellants. *Perkins v. Elg,* 307 U.S. 325, is the leading authority that citizenship is determinable under this statute. Compare also, *Ng Fung Ho v. White,* 259 U.S. 276, 285, and *Lee Fong Fook v. Wixon* (CCA-9), 170 Fed. 2d 245, declaring a person is entitled to a judicial trial on his claim to be a citizen.

The suits also lie under 8 USCA, Sec. 903, to determine the U.S. nationality of the appellees as also to determine their citizenship rights. The appellants, by virtue of the renunciations, denied and still deny the citizenship of the appellees and deprived and still deprive them of all the rights, privileges and immunities of national citizenship. Their freedom of movement, the right to leave the continental limits of the U.S. and to return, the right to vote, to hold public office and all other civil rights still are denied to each of them by the appellants. See allegations of those deprivations, par. VIII (R. 99-102), and par. V (R. 97) of the amended complaint. Each of the appellees is deprived of all the rights of national citizenship to this day by the appellants. See *Brassart v. Biddle* (CCA-2), 148 Fed. 2d 134, 136; *Chin Wing Dong v. Clark* (DC-Wash.), 76 Fed. Supp. 648, 652; and *Ginn v. Biddle* (DCPa.), 60 Fed. Supp. 530, for authority that suits lie under this statute to determine nationality denied by government agents.

The pleadings necessary to show the existence of the jurisdictions are the amended complaint (R. 92); the answer thereto (R. 126); stipulation and order (R. 408a) submitting the causes for decision on the merits; opinion (R. 410); interlocutory decree (R. 430); designation filed Feb. 25, 1949 (see unprinted record or App. A to appellants' brief, p. 1); order requiring defendants to show cause why designations should not be stricken (R. 439), motion to strike designation of plaintiffs (R. 442) and affidavit in support thereof (R. 445); order striking defendants' designation of plaintiffs (R. 455); findings of fact and conclusions of law (R. 460); final order, judg-

nent and decree (R. 482); notice of appeal filed April 26, 1949 (R. 488), and order modifying judgment dated May 2, 1949 (R. 490).

Evidence upon which cases were submitted for decision on the merits of the causes aside from matters of which Court takes judicial cognizance.

The "Stipulation" (R. 408a) was entered into at the special instance and request of the appellants for the purpose of submitting the cause on the merits so as to obtain a final judicial determination of the issues involved and thereby avoid thousands of individual hearings which would be impracticable and would tie up the District Court for years in litigation. It was entered into following a number of conferences between counsel for the parties and the trial judge.

Under that stipulation the causes were submitted for decision "*on the merits and the present record as it stands, including any evidence by way of affidavits and exhibits submitted on the respective motions for summary judgment and for judgment on the pleadings*". By its terms the evidence submitted by the appellees consisted of the following documentary evidence in affidavit form offered on appellees' motions for summary judgment and on the pleadings and specified at R. 223-224 to consist of the following: (1) the original complaint (R. 2) with its Exh. 1 (R. 32); (2) supplement thereto (R. 62) with Exh. 2 (R. 75) and Exh. 3 (R. 82); (3) the amended complaint (R. 92), the said supplement and amended complaints each being specifically filed as affidavits "*for and on behalf of each and all*" of the plaintiffs and "*in lieu of filing separate affidavits by each individual plaintiff*" (see R. 224);

and the following affidavits, viz., of (4) Tetsujiro Nakamura (R. 225); (5) Masami Sasaki (R. 255); (6) Ernest Besig (R. 267); (7) Rev. Thomas W. Grubbs (R. 290); and (8) Ann Ray (R. 301). All of said evidence was introduced on the issues involved and no objections or exceptions thereto were taken by the defendants below.

In addition thereto, the plaintiffs below delivered to the court below the following documents of which it was authorized to take judicial notice, viz., "Final Report" of General DeWitt, H.R. 1911, H.R. 2124, and several volumes of H. Res. 113.

Under the stipulation the following documentary evidence was introduced on behalf of the defendants below, viz., affidavits of (1) John L. Burling (R. 147); (2) Charles M. Rothstein (R. 210); (3) Ollie Collins (R. 213); (4) Joseph J. Shevlin (R. 216); (5) Lillian C. Scott (R. 219); (6) Rosalie Hankey (R. 324); (7) Thomas M. Cooley, II, dated March 18, 1945 and filed March 24, 1947 (R. 403). The affidavit of said Thomas M. Cooley, II, dated Jan. 9, 1947 (not printed), was filed as part of the defendants' supplemental brief in the court below on Jan. 27, 1947. It was never offered as evidence by the defendants.

In addition to the foregoing the defendants filed with the court below a copy of "The Spoilage" by Dorothy S. Thomas and Richard Nishimoto.

The plaintiffs below filed objections and exceptions to and motions to strike (R. 318) defendants' said documents Nos. 1, 2, 3, 4, 5, and the affidavit of Thomas M. Cooley, II, included in defendants' points and authorities filed Nov. 12, 1946. The plaintiffs below also filed objections and

exceptions and motion to strike and motions to suppress evidence illegally obtained (R. 397) to defendants' documents, to-wit, the affidavit of Thomas M. Cooley, II, dated Jan. 9, 1947, which was annexed to the supplemental brief of the defendants filed below on Jan. 27, 1947, and also to the said affidavit of Rosalie Hankey. Under the stipulation (R. 408a) only that evidence, if any, contained in the defendants' offered documents that was "*legally admissible as competent, relevant and material evidence against the objections and exceptions made thereto and against the motion to suppress*" could be considered and given any evidentiary weight by the trial court.

The fictitious designations.

We direct the attention of the Court to the following facts: The opinion (R. 410) of the court below was rendered and filed on April 29, 1948, giving the defendants 90 days within which to file a designation of any of the plaintiffs against whom they might wish to present further evidence. Up to August 17, 1948, several hundred additional parties plaintiff were joined to the suits by *stipulations* between the parties upon which joinder orders were obtained. (See R. 491-500 for 63 of these stipulations listing names and the unprinted record for the originals). On July 27, 1948, the defendants procured an order extending time (R. 427) to August 28, 1948, to file any such designations. On August 23, 1948, they obtained a like order (R. 428) extending their time 120 days so to do. Up to September 20, 1948, the Justice Department attorneys contemplated that they would treat a final district court decision of the causes as being dispositive of the rights of all citizens who had renounced because the suits were repre-

sentative class suits. Thereafter, however, they grew undecided on that matter. By September 27, 1948, the last joinder of parties plaintiff had been made by agreement between the parties.

From the opinion date (April 29, 1948) to September 27, 1948, counsel for the plaintiffs, pursuant to an oral agreement with attorneys for the Justice Department, refrained from entering the interlocutory decree simply to enable that Department to examine its files relating to each renunciant to ascertain whether it intended to file any such designation and to prepare it in the event it decided so to do. The interlocutory decree (R. 430) finally was filed on September 27, 1948, and the defendants therein were given 120 days therefrom within which to file any such designation upon oral representations being made to the court below that the Justice Department would complete a re-examination of its files within that period and determine whether it would file any designations. However, they failed to make up their minds and asked for a further extension of time and, although the matter was contested, they were given an additional 30 days' extension by an order extending time (R. 438) on January 25, 1949. On that date the Justice Department representative from Washington was present and requested another extension which was obtained, over the objection of plaintiffs' counsel, on the ground that additional time was necessary to complete a re-examination of the Justice Department files and ascertain whether any plaintiff or plaintiffs were to be designated. On February 25, 1949, the defendants filed what they now would have us believe was a genuine designation. (See unprinted record and also App. A to

appellants' brief). That designation was not a designation such as the defendants or the court below originally or at any time whatever contemplated or understood might be filed. It was nothing but a classified list of all of the plaintiffs which, in fact, on January 25, 1949, when the defendants applied for their last extension, actually was in the possession of the attorney sent from Washington to San Francisco to make that request for additional time and which had been granted after he had made specific representations to the court below, in conference, that if any designation was to be filed it would be a genuine one conforming to the type the court below had been informed would be filed if any designation was to be filed. See R. 445 at 449.

When the defendants had filed that spurious designation the plaintiffs interposed a motion to strike (R. 442) the designation filed Feb. 25, 1949, applied for and had issued an order (R. 439) requiring the defendants to show cause why it should not be stricken and a final judgment and decree entered for plaintiffs. The motion was supported by an affidavit of merits (R. 445). After the matter was argued orally the court below, having also actual knowledge of the facts, for good cause shown, made and entered its order striking defendants' designation of plaintiffs (R. 355) on March 23, 1949. Thereafter, proposed findings were lodged by both sides and, thereafter, the final findings (R. 460) which were discussed and formulated by both sides in conference with the trial judge were signed and thereupon the final order, judgment and decree (R. 482) was entered on April 12, 1949.

Appellants' peculiar proposal.

Instead of complying with the requirements of the judgments below the appellants, with cunning evasion to make it appear that they are endeavoring to do so, actually defy them and suggest counter measures. The proposal they make in their brief, reduced to its essence, is that this Court delegate its judicial functions to the Attorney General so that it may be transformed into administrative caprice and the appellants' citizenship be made dependent upon his whim. They have forgotten that paragraph XVIII of the answer (R. 134) alleges the Attorney General has no power to cancel renunciations because he has no power "to confer citizenship on persons who have lost it". They also appear to have forgotten their long time anxiety and persistent efforts to have the causes submitted to the trial court for decision on the merits of the issues for the precise purpose of precluding individual hearings, as evidenced in the stipulation at R. 408a. It is a strange proposal they now make when it also is recalled that for five continuous years the appellants have persisted in depriving the appellees of their citizenship status and rights and continue so to do. They must be aware that judicial functions cannot be delegated. *Holiday v. Johnston,* 313 U.S. 342, 352. Perhaps they assume the appellees are naive enough to disregard the judgments below and cast themselves upon the Attorney General's peculiar quality of mercy which to this date has been withheld so grudgingly. In other words, appellants' counsel would substitute their newly-begotten administrative whims for the judicial wisdom of the trial judge as resolved in the judgment. We are not quite that naive.

Appearances of defendants below.

All the defendants named in the complaint (R. 2, 4) appeared in the proceedings below. Counsel for the defendants, having orally *consented to appear for all the defendants,* did so in stipulations on Dec. 31, 1945 (R. 57), and on Jan. 2, 1946 (R. 61); in stipulations that service of supplement to complaint (R. 62 at 86) be deemed "made on defendants" on March 4, 1946; stipulations of March 14, 1946 (R. 86-7 and 87-8); in acknowledgments of service of copies of the amended complaints for and on behalf of "each of the defendants" (R. 92 at 122-3) on Aug. 15, 1946; in stipulations (R. 124-5) of Aug. 15, 1946; on Sept. 19, 1946, the U. S. Attorney as attorney for the "defendants" filed a motion to strike (R. 125-6) on behalf of all the defendants; in acknowledgment of service of copies of motion to strike (R. 139 at 142) on Oct. 10, 1946; in acknowledgments of service of motion for summary judgment (R. 143-144) on Oct. 14, 1946, and in the notice of hearing of motions (R. 145-6) on Oct. 16, 1946.

Counsel for defendants below filed an answer (R. 126) for defendants Clark, Hennessy and Wixon on Oct. 10, 1946. (R. 142.) The reason why they did not file specific answers for the other defendants is simply that the Justice Department lawyers, after conferences with the other defendants, were informed that the Secretaries of the Interior and State and the other defendants were opposed to contesting the suits. Thereafter, on Dec. 10, 1946, the defaults of defendants Best and Myers were entered. (R. 222.) Instead of taking judgment by default against any of the defendants the plaintiffs elected to have the causes

submitted to the trial court for decision on the merits. See stipulation (R. 408a) of Oct. 10, 1947, which was solicited and approved by the Justice Department attorneys.

Counsel for the defendants ("respondents") below also filed a cross-motion for summary judgment (R. 146) on Nov. 12, 1946 (R. 221), accompanied by affidavits (see filing date of Nov. 12, 1946, at R. 221); on Jan. 29, 1947, attorneys for "defendants" acknowledged receipt of copies of objections and exception to evidence, motion to strike and motion to suppress evidence illegally obtained. (R. 401.)

Between Dec. 31, 1945, and Aug. 17, 1948, in excess of 63 stipulations were entered into between the counsel for the defendants and plaintiffs for the joinder of parties plaintiff. (See R. 491-500 for reference to these and the unprinted record for the originals as well as for a considerable number of stipulations extending time, for substitution of parties defendant, etc., and for acknowledgments of service executed by counsel for the defendants.)

Counsel for the defendants below never at any time whatever withdrew or filed any withdrawal of representation of any of the defendants. Having appeared for all of them they took appeals (R. 488) for all of them. The court below made a finding (par. 2 at R. 468-9) that all the defendants appeared in the suits below. That finding is fully supported by the record itself as also by matters of which the trial judge had personal and judicial knowledge and, as such, cannot be set aside. See Rule 52(a), R.C.P.

Appellants' disregard for facts.

The footnote on page 80 of the brief for appellants contains a series of sly misstatements that are the product of the ignorance or of the malice of those who prepared it. Answering them seriatim: The basis for assuming the parties plaintiff desire to set aside their renunciations is the letters they sent to the Attorney General cancelling them as alleged in par. XII of the amended complaint (R. 118) and the admission of the truth of that allegation contained in par. XVIII of the answer at R. 134. In addition thereto, the verified complaint (R. 2), the supplement thereto (R. 62) and the amended complaint (R. 92) are notices thereof. Attention also is drawn to the fact that the Justice Department has in its files the original letter sent to the Attorney General by each renunciant notifying him of the rescission thereof and the grounds therefor. See Burling affidavit, R. 192-193. Further, appellees' counsel wrote letters of cancellation for each. See R. 32. In view of these facts it ill becomes appellants' counsel either to ignore, to evade or to deny the facts.

The presumption counsel for appellants have indulged in that appellees' counsel cannot vouch for requests for representation is not only presumptuous but is fictitious to boot. Suffice to state that each appellee authorized counsel to represent him or her in person and by writing or by a writing in the form of not less than one letter sent by mail or by courier to him or by delivery to him in person and also by the filling out of a personal history questionnaire. In addition thereto, each appellee conferred with counsel either at Tule Lake, Bismarck, Santa Fe,

Crystal City, Bridgeton or San Francisco or at more than one of said places.

The statement in appellants' brief that the four plaintiffs there named or that any of them at any time whatever entered a dismissal of their judgments in the court below or here is a barefaced falsehood. The records contain no such dismissals. Apparently there is no level to which counsel for appellants who prepared that brief would not stoop to make a false insinuation against appellees' counsel and to mislead the court.

When the causes are completed the appellees' histories are destined for the archives of the University of California and Columbia University so that whoever in the future may be interested in delving into the outrages committed by the government and its all too willing agents against the appellees will find truer data concerning that oppression than has been published and than elsewhere exists. A copy of the record, printed and unprinted, and of appellants' and appellees' briefs will be added to those files by appellees' counsel to direct the attention of future historians to the verifiable falsity of those charges so as to reveal that those irresponsible government tools who have been guilty of such reprehensible conduct not only lacked an appreciation of the truth but actually shunned it. It is evident that although certain attorneys may be in the pay of the government that fact in and of itself is not a guaranty that they have a predilection for truth and veracity or that they are anything other than hirelings.

QUESTION INVOLVED.

Are wartime renunciations of U.S. nationality executed under 8 USCA, Sec. 801(i) by adult, infant and insane appellees void for being the direct and proximate result of the duress in which they were held and to which they were subjected by the Government during an unconstitutional internment imposed upon them simply because they were of Japanese lineage?

PRELIMINARY STATEMENT.

The United States Government, which as children we had been taught was devoted to "liberty and justice for all", has been guilty of grave injustices and of serious offenses against the appellees and, consequently, against the nation and humanity. It has been guilty of something infinitely worse. It has betrayed the great principle of equal justice upon which this Republic was founded.

It made innocence a crime and prescribed imprisonment for an indefinite period of time as its punishment. It drove the appellees and some 130,000 other innocent men, women and children from their homes, cheated them of their possessions, impoverished them, deprived them of their liberties and goaded them into concentration camps. It sanctioned lawlessness against them. It delivered them into peonage. It kept them in a constant state of fear, terror and despair. It forced a number of them into insanity. It defrauded thousands of citizenship and then scheduled them for deportation and now threatens a number of them with removal to Japan.

All this mistreatment and abuse was visited upon them simply because they are descended from ancestral lines containing progenitors who were inhabitants of the land known as Japan. The lines transmitted a few more of the genes responsible for pigmentation than those transmitted by Anglo-Saxon and Mediterranean stocks. Apparently this, in some unexplained manner, seems to render the yellow-citizen an inferior and the white-citizen a superior being and justifies on ''racial'' and, therefore, necessarily on ''constitutional'' grounds, the drawing of a division line between the two types. This evidently authorizes executive officials to discriminate against them whenever the caprice of the moment demands. We believe, however, that the mistreatment of these citizens is not to be attributed so much to the abnormality of the times as to the abnormality of the minds of those responsible for this outrage. Apparently these officials reposed little confidence in the Constitution and disbelieved in the Sermon on the Mount while beguiled by the Rosenberg lies of white supremacy.

It is possible that the most priceless possession in the world today is American citizenship, but, whether so or not, it was the last possession in which the unfortunate appellees were permitted to take pride. Then it, too, went the way of their property rights and civil liberties and for the same reasons. They long had been deprived of it before signing formal applications for renunciation of United States nationality. The substance and significance of citizenship had been abstracted when they were compelled to surrender and surrendered all that remained of it—a meaningless name. Imprisonment of innocent per-

sons for an indefinite period of time without hope of release breeds despair. Renunciation of citizenship was not the product of disloyalty or hostility on their part but of hostility to them on the part of the Government. It was the result of fear induced by governmental duress concurrent with the internal duress of pressure groups in the Tule Lake Center which was exerted upon them with the full knowledge of the governmental officials in charge of them and without protection against that terror having been given them by the Government.

The proximate cause of the renunciations by the appellees was governmental duress, a duress initiated by a military commander, ignored by the Congress, supported by executive agencies and sustained by the courts in complete defiance of the letter and spirit of the Constitution.[1] That document, once considered a noble charter of human rights, no longer is a law for rulers and the ruled. It is become a reference work for the use of the historian. It is become the habit to ignore it because, by such an omission, anything can be justified. Transgressions upon its guaranties are excused simply by declaring governmental errors to be the products of historic necessity. Matters of political expediency, masquerading under the name of "public necessity" or "military necessity", based upon the fiction of necessary governmental or military secrecy, find acceptance in dictatorial minds. It is such minds, however, that form the real source of danger to the prin-

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[1]In *Korematsu v. U. S.*, 323 U. S. 214, the Supreme Court committed a serious error. It upheld the supremacy of the personal caprice of a military commander over general law. Rationalizing injustice may be politically expedient but it is a travesty on constitutional principles.

ciples of justice and equality that characterize our republican democracy. The nation has far more to fear from those whose crime is the destruction of constitutional rights than from those whose criminality consists of mere statutory violations. The former offend the nation and are left at large while the latter offend the individual and wind up in jail.

There are those who wear the mantle of American citizenship who believe it entirely proper that the yellow-skinned citizen should cringe at the feet of the "superior" white man and that all his rights should be sacrificed on the fictitious plea that it might serve the common weal. They do not believe, however, that a like sacrifice should be made by the white man.

Abnormal times beget abnormal results when abnormal minds are permitted latitude in dealing with citizens they are suffered to command. Law simply did not exist for these people—they were subjected to the arbitrary rule of executive officers and agencies. Whim and caprice and their servants, command and order, became the substitutes for law and these had the backing of bayonets to force obedience. Our Nisei expected a few ignorant persons to discriminate against them. They never dreamed, however, that the Government itself would discriminate against them, would repudiate them, would treat them as though they were alien enemies and do violence to them without cause. We learned to scorn a Germany which, under the lash of the late Herr Hitler, was guilty of abusing segments of its own citizenry for "racial" reasons. We were inured, however, to a like abuse of our own citizens by

our own Government. It is strange that the barbaric treatment of German citizens by the German government earned our scorn while our own barbaric treatment of Americans of Japanese descent appears to have gained our praise.

While hounding individuals whom it accused and tried for the commission of "war crimes" throughout a goodly portion of the "civilized" world the Government diverted attention from the crimes of which it had been guilty at home.[2] Now that the war is over, perhaps we yet may be able to renew our faith in intellectual honesty and the long abandoned principles of democracy. Mayhaps we may even recover a measure of our integrity.

OUTLINE OF OUTRAGES COMMITTED BY THE UNITED STATES AGAINST ITS OWN CITIZENS.

It is significant that in November, 1941, when war with Japan was imminent and the Japanese government sent ships to our shores for the purpose of evacuating her citizens that not one of our resident nationals of Japan

[2]General Yamashita, one-time conqueror of the Philippines and Malaya, was tried by a United States military tribunal in Manila after the cessation of hostilities when the Philippine civil authorities had been restored to their posts. He was convicted by a military jury of his peers and sentenced to death for condoning the personal crimes of subordinate officers and men albeit the Supreme Court, in *Ex parte Quirin*, 317 U. S. 1, had declared individual guilt to be the test of criminality. *Yamashita v. Styer*, 327 U. S. 1. If Yamashita, an executive officer of his own government, was punishable by our government for condoning offenses of which he probably knew nothing what is to be said of our own government and officials who not only condoned the crimes of our government against our native born citizens but actually aided and abetted and were accessory to and directly responsible for their plight?

or their children accepted the offer. Only a few alien Japanese who were temporarily visiting our shores accepted the offer. See *H. Res.* 113, pp. 11452, 11447. That fact eloquently expressed the loyalty and desire of our resident Japanese to remain in the United States at that most critical time. The applications for repatriation made by a number of aliens four years later in 1945 was the result of the long and unnecessary internment inflicted upon them. The requests for passage to Japan made by citizens in 1945 was an act of despair resulting from four long years of what cannot be viewed other than as an attempted complete repudiation of their citizenship unjustly made by the executive branch of the U. S. Government.

The storm of war struck us on December 7, 1941.[3] Immediately the President enjoined Japanese nationals within our jurisdiction to preserve the peace and pro-

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[3]On December 7th resident Japanese nationals and citizens of Japanese ancestry went through the first baptism of fire in the late war. Many were slain by the enemy air-attack and many were wounded, it being known that they suffered more civilian casualties than all of the other ethnic groups combined. See Andrew W. Lind's "The Japanese in Hawaii Under War Conditions", 1943, American Council Institute of Pacific Relations.

It is pertinent to the issues herein that on that eventful day there were thousands of American citizens of Japanese lineage serving in our armed forces. Not fewer than 300 were serving in the far Western Pacific, in G-2, the military intelligence service, a fact which must have been known to General DeWitt. In addition to those serving in the National Guard in Hawaii many there were serving in the Territorial Guard of Hawaii. Thousands on the continental United States long prior thereto had registered under the Selective Training and Service Act of 1940 and had been called to the colors. In excess of 5,000 were serving in the military forces on the mainland United States and in Hawaii at the time. (See letter of the President to the Secretary of War dated February 1, 1943, and H.R. 2124, p. 143.)

hibited them from possessing firearms, ammunition, signal devices, cameras, short wave radios and other articles of a contraband nature. (Public Proclamation No. 2525, 6 F.R. 6321.) On December 8, 1941, he placed similar injunctions upon German and Italian nationals within our jurisdiction. (Pub. Proc. No. 2526, 6 F.R. 6323, and No. 2527, 6 F.R. 6324.) These proclamations were issued under authority of the Alien Enemy Act, 50 USCA, sec. 21. They delegated authority to the Attorney General to enforce the provisions thereof on the mainland and the Secretary of War on our outlying possessions. (See H.R. 2124, pp. 294-300.) On Dec. 8, 1941, Congress declared war on Japan. On Dec. 11, 1941, Germany and Italy declared war on the United States. On the same day Congress retaliated by declaring war on them.

Following the outbreak of war the Department of Justice promptly apprehended alien enemies deemed to be dangerous to our security. A total of 12,071 Axis nationals were taken into custody under the authority of the Alien Enemy Act, were interned in special internment camps in North Dakota and elsewhere and were given prompt individual administrative hearings by the department. A majority of these finally were released during the war upon a finding they were not hostile to our security.[4]

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[4]Several hundred alien Japanese (Issei) residents were detained throughout the war under the arbitrary classification of being dangerous alien enemies under a claim of authority of the Alien Enemy Act at Bismarck, Santa Fe, Tule Lake and elsewhere. Intervention on their behalf resulted in the release of a majority during 1946. Thereafter those of the group still detained who were in good health were permitted to obtain gainful employment on "relaxed internment" at Seabrook Farms, N.J., while the physically infirm re-

On January 5, 1942, General J. L. DeWitt wrote Assistant Attorney General James D. Rowe, Jr., stating that the Army did not wish "to undertake the conduct and control of alien enemies anywhere within continental United States". See his *Final Report*, p. 19. By letter of February 12, 1942, however, he wrote the War Department suggesting that a method be developed "to provide for the evacuation from sensitive areas of all persons of Japanese ancestry". (*Final Report*, p. 25.) His utterly incredible hatred of Japanese descended persons, all of whom he viewed as enemies, is revealed in that letter. See his *Final Report*, p. 34, wherein he brands them as non-assimilable racial enemies, ready to engage in hostile acts against us, and states that "The very fact that no sabotage has taken place to date is a disturbing and confirming indication that such action will be taken". His idea of "sensitive areas" was to expand until it included Alaska and eight western states. His infamous "Jap is a Jap" speech, reported in the San Francisco News of April 13, 1943, leads us to believe that if unchecked he would have excluded this minority from the country and, that if he could have had his way, from the earth.

On January 14, 1942, the President, by Public Proclamation No. 2537 required all alien enemies to acquire

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mained at Crystal City, Tex. Inasmuch as these were under removal orders issued by the Attorney General habeas corpus proceedings were instituted on their behalf at Philadelphia, Pa., on January 1, 1947, and Del Rio, Tex., on February 1, 1947, to pry them loose from internment and prevent their impending removal to Japan. Thereafter, pursuant to arrangements entered into between the Attorney General, the USI&NS and their counsel all of them were released into the custody of their counsel on September 30, 1947, and thereupon returned to their respective homes. Thereafter, with two exceptions, the removal orders were rescinded by the Attorney General.

identification certificates. Between January 29 and February 7, 1942, the Attorney General, under authority delegated to him by the President set up zones upon the Pacific littoral and restricted the activities of all alien enemies therein. (H.R. 2124, pp. 302-314.) The restrictive areas encompassed national defense material, premises and utilities defined in 50 U.S.C.A., secs. 101, 102, a statute entitled "Willful Destruction of War or National Defense Material", a violation of which was punishable by 30 years' imprisonment and $10,000 fine under sec. 102 or a like sum and 10 years under sec. 105. The declared purpose of setting up these prohibited zones was to prevent acts of espionage and sabotage to such material, premises and utilities. These proclamations had a reasonable relation to national security and were properly invoked under the Alien Enemy Act. On February 4, 1942, the Attorney General announced that an area extending from 30 to 150 miles inland from the Pacific shoreline had been declared a "restrictive area". On the same day he established curfew regulations and placed travel restrictions upon all alien enemies residing therein. (H.R. 2124, p. 310.) Approximately 10,000 German, Italian and Japanese nationals departed from the forbidden areas. These alien enemies were not confined to concentration camps. (H.R. 1911, p. 2.)

In February, 1942, it was rumored that General DeWitt might desire an evacuation of "all Japanese" from the west coast. This caused a degree of hysteria among the Japanese descended persons in our midst. Avarice, that incentive to pillage, was aroused by the rumor—and human harpies flew to the scene to prey upon the misery

and profit by the misfortune which was about to be visited upon these people. The rumor gave license to loot. The affected persons, apprehensive of what the future had in store for them, disposed of their properties and possessions on a distressed market at 5 to 10 cents on the dollar. Millions were lost to the swindlers who flocked to the west coast attracted by the prospect of plunder. Eight years having elapsed since then a faint trace of governmental sanity has been recovered.[5] Congress has made a gesture towards compensating the victims for the loss of their properties but has not indicated any repentence for their loss of rights and liberties. The congressional pursestrings, however, were not loosened with abandon or generosity but with a cautious reluctance. See Act of July 2, 1948, 62 Stat. 1231, relating to Japanese Evacuation Claims.

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[5]While detained in the WRA Centers and various alien internment camps a large number of Japanese aliens were discovered either to have entered the country illegally or to have lost their admission status as a result of the war. These were seized by the immigration authorities and held for deportation on claimed violations of our immigration laws. Following the commencement of a series of test proceedings in habeas corpus (Nos. 26019-26022) in the District Court below on May 29, 1946, all of these were paroled to their counsel. Thereafter, the government, faced with the possibility of a judicial determination against their deportability on one hand and the possibility that if they were held to be deportable that Caucasian violators of our immigration laws in like circumstances would also be deportable, hesitated to force the issue. Thereafter, Thomas M. Cooley II of the Justice Department, having grown sympathetic to the plight of these long time residents, was instrumental in initiating relief legislation in Congress which rendered them eligible to apply for a suspension of deportation and permanent resident status in this country. See Title 8 *USCA*, Sec. 155(c), as amended July 1, 1948, 62 Stat. 1206.

The false arrest and imprisonment.

On February 19, 1942, a bill, S. 2243, providing for the detention of any or all Japanese was introduced but failed to pass in the Senate. See 88 Cong. Rec., S. Rep. No. 1496, Calendar No. 1541. Reintroduced June 18th and debated it was rejected on June 20th.

On February 19, 1942, in order to provide for the transportation, food, shelter and other accommodations of persons who might be prohibited from leaving or entering military areas which might thereafter be prescribed by the Secretary of War or military commanders designated by him, the President issued Executive Order No. 9066. See 7 F.R. 1407. This order appears to have been intended to ratify and approve the restrictive action taken against alien enemies by the Attorney General pursuant to presidential Proclamations 2525, 2526 and 2527. Its preamble declared its purpose was the taking of every possible protection against espionage and sabotage to national defense material, premises and utilities.

It is from this executive order, however, that General DeWitt's savage evacuation and imprisonment program stems. It has no constitutional source. The military action taken thereunder which abridged practically all the constitutional rights of some 73,000 citizens on a "racial basis" is not sanctioned by the Constitution. It was nothing but an expression of reckless autocratic power. The order was an executive experiment in the usurpation of extra-constitutional power. If the late President Roosevelt was informed of the sinister purposes to which his order was to be put he will be known to history as the father of the vicious "racial" doctrine of inequality which

in *Korematsu v. U. S.*, 323 U.S. 214, won the temporary support of a majority of the Supreme Court justices and already has earned that court some of its severest criticisms.[6]

On March 2, 1942, General DeWitt set up Military Areas Nos. 1 and 2 and required alien enemies and citizens of Japanese ancestry in Military Area No. 1 to give notice of change of residence. (Public Proclamation No. 1, 7 F.R. 2320.) This was the first discrimination against citizens of Japanese ancestry and the first act by which an executive official classified and treated our own citizens as though they were "alien enemies". We could expect errors of judgment to be made by a lieutenant general but we never expected deliberate malice to be displayed.

On February 27, 1942, the California State Board of Equalization arbitrarily revoked all alcoholic beverage licenses held by citizens of Japanese lineage. On March 4, 1942, the California State Personnel Board capriciously dismissed 88 civil service employees because of their Japanese ancestry. (The case of *Ex parte Endo,* 323 U.S. 283, was instituted to test the validity of their dismissals and loss of tenure.) The contagion of such discriminatory practices spread to other states, organizations and individuals. American Legion posts dropped the names of veterans of Japanese ancestry from their membership

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[6]See: "Americans Betrayed" by Morton Grodzins, Univ. of Chicago Press, 1949; "Racial Discrimination and the Military Judgment" by Nanette Dembitz, 45 Columbia Law Review 175; "The Japanese American Cases—A Disaster" by Eugene V. Rostow, 54 Yale Law Journal 489; "Our Worst Wartime Mistake", by Eugene V. Rostow, in Harper's Magazine, September, 1945.

rolls. One post composed of veterans of Japanese ancestry was deprived of its charter. A jingoist press steadily sought to whip up the spirit of vigilantism against our Japanese population.

Thereafter, on March 16, 1942, General DeWitt set up four additional military areas, viz., Military Areas Nos. 3, 4, 5 and 6, and required of like residents therein a similar giving of notice of change of residence. (Public Proc. No. 2, 7 F.R. 2405.) This was the second discriminating federal action taken against our citizens of Japanese ancestry whereby they were unwarrantedly classified and treated as though they were "alien enemies". The military department so set up embraced eight western States and Alaska and comprised in excess of one-fourth of the total geographical area of the continental United States. In this department the general played the rôle of an arbitrary and merciless ruler over our citizens of Japanese lineage although he did not dare to do so over citizens of Caucasian lineage.

On March 18, 1942, the President issued Executive Order No. 9102 (7 F.R. 2165) establishing the War Relocation Authority, an executive office, "to formulate and effectuate a program for the removal from military areas designated by military commanders of persons or classes of persons designated under Executive Order No. 9066. Under this order the director of the W.R.A. was vested with authority to provide for the relocation, maintenance and *supervision* of all persons deported from the military areas. He was authorized also by its terms to establish the W.R.A. Work Corps, to prescribe the work to be

performed by the evacuees in the corps and the compensation to be paid.[7]

The House of Representatives "Select Committee Investigating National Defense Migration", commonly called the Tolan Committee, reached the conclusion that if an evacuation of our citizen and alien Japanese population were to be put into operation such a program finally must result in their mass deportation to Japan and warned against it. See H.R. No. 1911, page 16, 77th Congress, 2nd Session, printed March 19, 1942, pursuant to H. Res. 113, reading, in part, as follows:

> "The incarceration of the Japanese for the duration of the war can only end in wholesale deportation. The maintenance of all Japanese, alien and citizen, in enforced idleness will prove not only a costly waste of the taxpayers' money, but it automatically implies deportation, since we cannot expect this group to be loyal to our Government or sympathetic to our way of life thereafter."
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> "Serious constitutional questions are raised by the forced detention of citizens against whom no indi-

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[7]Although internees recruited to perform seasonal work outside the W.R.A. concentration camps which were set up were paid the low wages their labor would fetch in the labor market created by such conditions those who were employed in the concentration camps received either $12, $16, or $19 per month and no more although they labored eight hours per day. (W.R.A. Manual, Chap. 50.5, Par. 6-A et seq.) Labor unions and the government were quite indifferent about the miserable peon wages and the provisions of the 13th Amendment forbidding slavery and involuntary servitude insofar as these citizens were concerned simply because by the accident of birth they were of Japanese descent. From the Government's viewpoint it was quite all right to exploit these citizens because it viewed them as "alien enemies" and, therefore, as though they were mere chattels because they were not born of "Caucasian" parents. At the Tule Lake Center the W.R.A. officially set up a slave labor racket and exploited internees for private profit. (R. 285-286.)

> vidual charges are lodged. Such detention must lead logically to an attempt to withdraw citizenship and ultimately to deportation of all members of the group."

What this congressional committee foresaw as the logical result of the evacuation-imprisonment program which a short time later was formulated and carried into execution by a military commander was the inevitable result of that program. Its admonition also was a prognostication that would have been fulfilled except for the halt called to the removal program by these suits in the court below. Ultimate mass deportation as their destiny was what the evacuees expected when the evacuation program was launched. In spirit and in reality the program was a governmental repudiation of the citizenship rights of all the evacuee citizens and, therefore, of citizenship itself. This fact must be borne in mind in endeavoring to understand the mental reaction of this much abused minority in connection with all that has transpired since the vicious program was initiated. The Administration is responsible for the relentless persecution of this minority for a period of eight consecutive years and all that has happened to them is the proximate result of that persecution. Apparently it is proud of its history of oppression.

On March 21, 1942, Public Law No. 503, now codified as Title 18 U.S.C.A., Sec. 97A, became effective. It made it a misdemeanor for anyone, contrary to a military commander's orders, to enter or to leave a military area prescribed by him. This statute was nothing but a bill of attainder repugnant to Art. I, Sec. 9, cl. 3 of the Consti-

tution and to the due process clause of the 5th Amendment as construed and applied to citizens on an ancestral origin basis. It was designed to serve as the enforcement machinery for reckless military fiats. The legislative history of the statute is a sorry story of evil objectives. It is significant that when Congress first was informed that General DeWitt desired its enactment the curfew feature was stressed as its chief objective. See letter of the Secretary of War of March 14, 1942, addressed to the House Committee on Military Affairs (H.R. 2124, p. 168) stating the general desired the passage of S. 2352 and H.R. 6758, which became Public Law No. 503, to enable the enforcement of "curfews and other restrictions" in military areas. On the basis of this indirect supposititious notification to Congress the Supreme Court decided, in *Hirabayashi v. U. S.*, 320 U.S. 81, that Congress contemplated the enforcement of a curfew and read this into the statute by implication. No such inference can be drawn, however, that Congress contemplated, understood or intended that it would be used to enforce a mass evacuation program which from its inception to its conclusion was nothing but a vast imprisoning program for our Japanese population.

Congress was not informed that General DeWitt intended or desired to institute a generalized imprisonment program for all Japanese descended persons. The first notice that any member of Congress had that anyone was to be evacuated was gleaned from the reading of a Washington newspaper report on March 19, 1942, that the general was going to evacuate a limited number of aliens and citizens from the Los Angeles area "early next

week''. See 88 Cong. Rec. 2722-26. The report was erroneous for none were excluded from that area until April 5, 1942, pursuant to Civilian Exclusion Order No. 2. See H.R. 2124, p. 334. The congressional committee reports are barren on the subject of evacuation. Congress neither expressly nor impliedly authorized the imprisonment of these people, a matter which was not even in its contemplation when it passed Public Law No. 503. It is significant that on June 18, 1942, S. 2293 which sought the taking into custody of all Japanese was introduced into the Senate and was rejected. (88 Cong. Rec. 5317.) On June 22, 1942, the bill was debated and rejected, it being pointed out that the passage of such extreme legislation would constitute ''winking at the Constitution''. (88 Cong. Rec. 5427-29.) The bill was the product of chicanery. The ''winking'' was done by the general, the War Department and, finally, by the Supreme Court in *Korematsu v. U. S.,* 323 U.S. 204.

How the Government duress arose.

On March 24, 1942, Public Proclamation No. 3 (7 F.R. 2455) imprisoned all the plaintiffs as ''persons of Japanese ancestry'' in Military Areas Nos. 1 to 6, inclusive, in their places ''of residence between the hours of 8:00 P.M. and 6:00 A.M., i.e., during ''hours of curfew'', and at all other times ''such persons shall be only at their place of residence or employment or traveling between those places or within a distance of not more than *five miles* from their place of residence.'' This was a military imprisoning order that remained in full force and effect until January 2, 1945, when General H. C. Pratt's Public

Proclamation No. 21 issued on December 24, 1944, revoked the mass exclusion orders hereinafter mentioned. The proclamation threatened violators of its provisions with exclusion from the military areas described therein, apprehension and prosecution under Public Law No. 503. (18 USCA, sec. 97a.) It further treated all "persons of Japanese ancestry" as alien enemies by prohibiting to them the possession, use and operation of firearms, weapons, ammunition, short-wave radios, radio transmitting sets, signal devices, codes or ciphers and cameras. Violators of such provisions after March 31, 1942, were threatened with prosecution under Public Law No. 503. If an alien violated the order he was subject to internment. If a citizen violated the order he was subject to prosecution and imprisonment and thereafter to internment.[8] General DeWitt, evidently priding himself on his own Caucasian ancestry, viewed Caucasian alien enemies as being entitled to better treatment than our citizens of Japanese lineage.

He subjected all persons of Japanese ancestry within Military Area No. 1 and those in the A Zones in Military Areas 2 to 6, inclusive, to curfew regulations and travel restrictions. Thereby he imprisoned them in an area circumscribed by a circle of a five (5) mile radius from

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[8]In *Hirabayashi v. U. S.*, 320 U. S. 81, and *Yasui v. U. S.*, 320 U. S. 115, the Supreme Court upheld the validity of a curfew on persons of Japanese ancestry as an emergency police power measure occasioning only a trifling invasion of personal liberty which the court assumed might have been justified as a military necessity. That there never had been a rational basis for the military commander having discriminated against them in applying such a measure later was revealed when General DeWitt's "Final Report" was published in 1943.

their dwelling places or places of employment. This was the initial imprisonment in a general imprisoning program. Thereunder they were deprived of the use, possession and enjoyment of specified articles of personal property as though the same were contraband and subject to appropriation and confiscation at his whim. It is notorious that the implacable general regarded them as "alien enemies" as demonstrated by his acts, repeated speeches, and his incredibly frank Final Report wherein he reveals he acted against them recklessly, maliciously and with prejudice.

Between March 24, 1942, and August 18, 1942, General DeWitt issued a total of 108 civilian exclusion orders providing for the imprisonment of 73,000 citizens and 43,000 aliens of Japanese origin. The first became effective on March 30, 1942, and the last was issued on August 18, 1942. These orders excluded all persons of Japanese ancestry from described geographical areas and ordered them into 15 stockades called "Assembly Centers" and "Reception Centers" from which they were transported and deposited in 10 prisons called War Relocation Centers. (See 7 F.R. 2581 and 7 F.R. 6703 for the first and last of these orders.) The last of these persons in the forbidden areas was removed to a War Relocation Center on October 27, 1942. *Final Report,* p. 158. It is to be recalled that the Japanese secret code had been deciphered in early 1942 and that our military and naval authorities were fully informed as to the disposition of the Japanese fleet and that our naval forces had won the Battle of Midway on June 6, 1942, and that this decisive victory removed the last threat of the enemy against our Ha-

waiian outposts. Nevertheless, General DeWitt, through his exclusion orders, continued to treat the evacuees as though they were alien enemies and continued incarcerating them in concentration camps. Few had a chance to escape imprisonment. The first such order gave the affected persons five days to leave Bainbridge Island and Military Area No. 1. Many took up residence in Military Area No. 2 only later to be picked up and be imprisoned in a concentration camp.

These civilian exclusion orders were in diametrical conflict with the provisions of Public Proclamation No. 3. The proclamation commanded the affected persons to remain within a 5 mile radius of their residences upon pain of penalty of prosecution for violation of Public Law No. 503. The civilian exclusion orders commanded them to depart from their residences and to confine themselves in Assembly Centers, from which they were transported to permanent War Relocation Centers for imprisonment for an indefinite period of time. Despite the fact that the proclamation and civilian exclusion orders required opposite acts of the affected persons and despite the fact that the Supreme Court held in *Korematsu v. U.S.*, 323 U.S. 214, that "a person cannot be convicted for doing the very thing which it is a crime to fail to do" that Court, nevertheless, held that a violation of an exclusion order was punishable under Public Law No. 503 because its provisions were not in conflict with Public Proclamation No. 4, ignoring the fact that it was in conflict with Public Proclamation No. 3. The majority decision and opinion of that Court was erroneous on the ground stated. Obviously the affected persons could not at the same time re-

main within a five mile radius of their residences and at the same time remove themselves therefrom to Assembly Centers without being guilty of violating one or the other of the orders and being rendered liable to prosecution and punishment under Public Law No. 503, now codified as Title 18 USCA, sec. 97a. These people were trapped into a choice of violating either Public Proclamation No. 3 or a civilian exclusion order and the punishment for either violation was identical. In view of the fact that the Supreme Court rendered its decision while the war still was in progress and when it was not apprised of the facts which since have come to light it is likely that Court one day may overrule the Korematsu decision.

On March 27, 1942, Public Proclamation No. 4 (7 F.R. 2601), a freezing order, commanded that commencing at midnight March 29, 1942, "all alien Japanese and persons of Japanese ancestry" within Military Area No. 1, be and they hereby are prohibited from leaving that area for any purpose until and to the extent that a future proclamation or order of this headquarters shall so permit or direct." Violation of this order was made punishable under Public Law 503. This order did not supplant or cancel Public Proclamation No. 3, which still remained in full force and effect. A like order froze similarly descended persons in Military Area No. 2. (Pub. Proc. No. 6; 7 F.R. 4436.) All the affected citizens were treated as though they were alien enemies.

Under the successive civilian exclusion orders the imprisonment of these people was affected as follows: They were ordered from the whole of California (Pub. Procs. 4 and 11, 7 F.R. 2601 and 6703) and portions of Wash-

ington, Oregon and Arizona unless they were within the bounds of Assembly Centers which were under the control of the Wartime Civil Control Authority, a military agency set up by General DeWitt whereby he kept his heel upon these people. The name of the agency was made euphemistic in order to mislead the public into a belief it was a civilian agency. See also, Pub. Proc. No. 7 of June 8, 1942, 7 F.R. 4498. These orders drove them into these Assembly Centers from which they were removed under armed military escorts as though they were alien enemies and prisoners of war to War Relocation Centers managed by the WRA. It is to be noted that alien enemies were better treated.

In this fashion the alarmist General provided for the imprisonment of our Japanese population for an indefinite period of time within the prescribed military areas. He did this despite the fact that Congress on February 19th and June 18, 1942, refused to authorize their imprisonment. Only the cessation of war prevented the imprisonment from being for life for a large number of them.[9] All the tears shed by helpless women and children and the shattered hopes, the fears and the disillusionment

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[9]General DeWitt who, since the war's end, has stated that he had been concerned only in the evacuation of these people and that he had not contemplated their internment appears to have forgotten his one time anxiety to insure the incarceration of evacuees in WRA Centers not only within his military department but outside that department. (See Pub. Proc. WD-1.) His memory today is lively insofar as his own property rights are concerned for although he has expressed a wish to reside on the west coast he excludes himself from so doing because of an unfounded fear of lawsuits being instituted against him by a number of one time excluded evacuees of whose rights he once exhibited little concern. Had he excluded himself from the area in 1942 instead of these citizens he would not now be given to seeing ghosts.

of these people made little impression upon him and the Government. The utter senselessness of this removal of a people was evidenced by the fact that he emptied the hospitals of the sick, the disabled and the dying, the stretcher cases and the insane. That thousands of innocent persons were confined and that hundreds of the ill, the halt and the infirm died in these concentration camps meant little to the Government. That thousands of little children were born in those camps and were not to leave those prisons for years bothered the Government not at all. The General embarked upon his venture of setting up an irresponsible military dictatorship over this segment of our population which has been perpetuated over a number of them to this day in the altered form of an executive dictatorship. He was a little known military officer who, following the advent of war, rocketed from obscurity to national prominence. The racial discrimination program which he instituted, however, forever brands him an oppressor.

On March 30, 1942, General DeWitt granted certain German and Italian nationals exemptions from exclusion from military areas. (Pub. Proc. No. 5; 7 F.R. 3725.) On the same date he announced that an evacuation "was in prospect for practically all Japanese". (See H.R. 2124, p. 165, and press release, Wartime Civil Control Administration, March 30, 1942.) He was not specific as to whom he intended the words "all Japanese" to refer and failed to designate the exclusion areas. He had issued at that time one civilian exclusion order excluding all Japanese descended persons from Bainbridge Island, Wash. By a Japanese, however, he meant any person who had an an-

cestor who at any time had been a subject of Japan as his subsequent acts prove.

On May 7, 1942, the American Legion and the Native Sons of the Golden West filed an injunction suit in the court below seeking to disenfranchise citizens of Japanese lineage. The suit was not brought against these citizens directly but against the registrar of voters to cancel their names as electors while they were absent from San Francisco and were held in concentration camps and unable to defend their rights. The suit was cowardly under the circumstances. It served the nefarious purpose of creating a degree of dismay in our Japanese population then suffering the ravages of racial discrimination. This court dismissed the action and the dismissal was affirmed on appeal. See *Regan v. King* (CCA-9), 134 Fed. 2d 413, cert den. 319 U.S. 753.

On May 19, 1942, the General issued Civilian Restrictive Order No. 1 (8 F.R. 982), a general detention order, prohibiting them from leaving these Assembly and Relocation Centers without authority. The order was a mockery because bayonets already prevented them from leaving and kept them imprisoned. The orders were the products of usurped power and were neither directly nor indirectly approved or ratified by Congress or the President.

On June 27, 1942, he promulgated Public Proclamation No. 7 (7 F.R. 8345), which designated existing and future relocation centers within his military department as War Relocation Project Areas. It required the inmates to remain within the bounds thereof and visitors to obtain written permission from his headquarters to visit them.

By letter dated August 11, 1942, he delegated to the W.R.A. an authority to issue permits to persons who could qualify for conditional leave. The source of his authority to issue such an order is not apparent—but then, the source of his authority to institute his vast imprisoning program is not apparent either. Suffice to say, the infamous European permit system first was introduced to America by him.

On August 13, 1942, the Secretary of War issued Public Proclamation WD-1 (7 F.R. 6593) under which the relocation centers outside General DeWitt's military department were designated military areas and the departure of persons of Japanese origin there confined was forbidden without permission of the Secretary of War or the Director of the W.R.A. Consequently, the triumvirate, the General, the War Department and the W.R.A., was responsible initially for the wrongs of which we complain. The Department of Justice was a late addition to its ranks but it shares the responsibility for the pitiless persecution of this segment of the nation.

The W.R.A. officials early noted the evacuees' "anxieties and tensions", their generalized feelings of fear and insecurity", their "fears about the post-war future", their "fears about the breakdown of family authority", their "fears about food", their "fears of violence" and their "fear of the outside". See *W.R.A. Second Quarterly Report,* July 1, to Sept. 30, 1942, pages 51 to 63. A steady stream of cravenly attacks upon persons of Japanese lineage added to the fear of violence entertained by the evacuees. The Poston Incident of Nov. 14, 1942, was

among the first of the series. The evacuees grew more apprehensive of the future.

On October 29, 1942, the General removed his restrictive measures taken against Italian nationals and on December 29, 1942, lifted the curfew restrictions on German nationals. He failed, however, to remove the curfew and travel restrictions he had imposed upon American citizens of Japanese descent whom he, as an executive official, with the approval of the War Department, viewed as "alien enemies" and therefore treated as alien enemies and later also insulted in his infamous "Jap is a Jap" speech.

Under the provisions of Executive Order No. 9102 the W.R.A. adopted an extraordinary series of rules and regulations under which it exercised an absolute supervision, dominion and control over these citizen prisoners. Jointly with the military commander it established a military government over them despite the fact that the establishment of a provisional government has constitutional sanction only in conquered or invaded enemy territory. A military government over our own citizens in an area free from martial rule has been expressly repudiated and condemned in the recent martial law cases. See *Duncan v. Kahanamoku,* 327 U.S. 304, and also *Ex parte Milligan,* 4 Wall. (U.S.) 2. Rule by executive officers in areas outside an actual theatre of war where martial rule necessarily is imposed is as much forbidden by the Constitution as is military rule over civilians.

The whole evacuation-imprisonment program was a military blunder of the first magnitude. It was given

international publicity and, in consequence, declared to the world our prejudice against citizens of Oriental ancestry and gave our enemies effective propaganda material for use against us throughout the Orient. Further, it advertised to the world that we deemed ourselves to be weak militarily and led our enemies to believe we were fearful of a Japanese invasion of our shores.[10]

Leave clearance arbitrarily denied.

Before a confined citizen could receive permission to depart from any of these concentration camps an application had to be made to the Director of the W.R.A. for "leave clearance". No hearing was held on this application and its grant or denial depended entirely upon the whim and caprice of the director who, in passing thereon, considered secret reports of the F.B.I. and other data concerning the applicant but of which the applicant had neither notice nor knowledge. Consequently, the applicant had neither an opportunity to defend himself against unjust charges nor to explain unjust accusations. The types of leave which were made available to an applicant who

[10]At the time of evacuation Germany was on the offensive in Europe and in the Atlantic whereas Japan's advance eastward toward Hawaii had been stopped in the Battle of the Coral Sea on May 4-8, 1942. Japan had suffered a crushing defeat in the battle of Midway on June 2-6, 1942, which secured our Hawaiian outposts from danger of invasion and attack. Our invasion of the Solomon Islands in July-August, 1942, had thrown the enemy back and secured our lines of communication to Australia. General DeWitt, as a general officer, was fully acquainted with our progress in the Pacific and appreciated the significance of these great victories. He also was aware that none of our Japanese residents in Hawaii had been guilty of any acts of espionage or sabotage. It was incredible that, in view of these facts, he proceeded to treat our citizen and alien Japanese on the mainland as constituting a source of danger to us especially when he knew also that they were guiltless of crime.

received a leave clearance were "short term", "seasonal work" and "indefinite leave". Each of these was subject not only to restrictions but to revocation. The most favorable type was "indefinite leave" and this was made contingent upon the applicant consenting to notify the director of any change of residence and employment. It was made dependent not only upon whether an applicant had financial means or was capable of self-support but also upon whether the community to which he intended to remove was willing to tolerate his presence. These were novel prerequisites to impose upon a citizen not charged with crime. The applications for leave clearance and those for each of the three types of restrictive leave were determined without hearings and in a manner in which all the elements of due process of law were lacking. In form and substance the leave of whatever type, if granted, with nothing but a limited probation or parole under which the applicant remained in the constructive custody of the W.R.A. and was restricted in his activities and movement by General DeWitt and other military commanders. As such it was a form of punishment. See *Korematsu v. U.S.*, 319 U.S. 432. Unfortunately, however, it was a punishment inflicted upon them that was wholly undeserved.

Those who were not given leave were punished more severely for they were kept imprisoned in the concentration camps without charge of crime and without hearing of any kind. It is to be recalled also that even those who received indefinite leave were prohibited from re-entering the states-embracing military department of General DeWitt and beyond those boundaries and, consequently, from

returning to their homes and resuming normal employment. They remained "in the constructive custody of the Military Commander in whose jurisdiction lies the relocation center in which the applicant resides at the time the permit is issued." See W.R.A. Administrative Instruction No. 22, par. 9, dated July 20, 1942. Although this instruction later was superseded, on paper, the fact of the military jurisdiction and control over them still obtained. Consequently, at most the leave which might have been granted by the W.R.A. amounted to nothing more than increasing the dimensions of the applicant's prison. The grant of a "leave clearance" arbitrarily made was tantamount, however, to a declaration and finding by the W.R.A. Director that the applicant was a loyal citizen. See *Ex parte Endo,* 323 U.S. 283. It is significant that neither the Constitution nor Congress expressly authorized the President or any executive official under him to detain citizens under Executive Order No. 9102 or to establish a military or provisional government over them. Such a tyrannical government over civilians long ago was denounced in the *Milligan* case and recently was repudiated in the *Duncan* case, supra. Nevertheless, in practice, the military dictatorship over them largely was supplanted by the executive dictatorship of the executive agency, the W.R.A. We belong to a generation given to denunciations of "fascist" and "communist" dictatorships. The difference between the two types is so trifling that it is scarcely worth mention. We failed to recognize, however, that the brand of dictatorship the executive department set up and wielded over this minority and continues to wield over a number from their ranks is of the

same species. We saw the symptoms but failed to recognize the disease.[11]

The Government branded citizens as alien enemies.

In March of 1942 the Government blundered into inactivating persons of Japanese ancestry serving in the armed forces in Hawaii and on the mainland although they did not so treat those who were serving in the Far Western Pacific. Those serving in Hawaii were inactivated in March, 1942, by General Delos C. Emmons, Commander of the Hawaiian Department. Disappointed by this shabby treatment, a group of these from the University of Hawaii organized themselves into the Varsity

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[11]Respectable organizations which long had enjoyed an undeserved reputation as guardians of the rights of racial minorities reacted to the ordeals of these persecuted people as groups of confused liberals usually do. They publicly approved the government's oppression and thereby forfeited their last claim to public respect. The Japanese American Citizen's League voiced no protests. (R. 243, 263.) The Amer. Civil Liberties Union of N. Y. reluctantly exhibited a limited interest in the Hirabayashi and Yasui appeals only after the Supreme Court had granted writs of certiorari. It was opposed to the prosecution of the Korematsu and Endo appeals which challenged the validity of the evacuation and detention of these people. Long after the habeas corpus proceedings and these suits in equity below had been instituted and the removal program halted and these suffering people had been liberated from internment it discovered it had missed a chance to reap publicity for itself and belatedly set about to assert it had been in favor of them from the start. It is unfortunate these organizations long had enjoyed a reputation for supporting worthy causes the while they were compromising great principles and betraying those causes.

The one group in the United States which expressed steady opposition to the persecution of these people from the inception of the evacuation-imprisonment-renunciation program to its conclusion was the independent ACLU of Northern California. It lent the weight of its moral support to their causes and assisted them where it could. See affidavits of Ernest Besig (R. 267-290) and of Ann Ray. (R. 301-317.) Aside from this organization these unfortunate and greatly wronged people have had to rely upon themselves without outside assistance.

Victory Volunteers, tendered their services to General Emmons, was accepted and detailed to the 34th Combat Engineers. This group was inactivated after 11 months of service to enlist in the Army. After being excluded from the draft approximately 10,000 volunteered to form the 442nd Combat Team which made history in Sicily and on the bloodstained beaches at Salerno. Those on the continental United States, including those within General DeWitt's military command, with few exceptions, were inactivated and the draft boards were ordered to refuse to induct boys of Japanese lineage and to refuse them as volunteers.

All the inactivated soldiers and all males of Japanese lineage who were of draft age shortly after September 12, 1942, received a draft classification of 4-C, that is to say, the U.S. Government deliberately classified these veterans and all males of Japanese lineage of draft age as "alien enemies". See *W.R.A. Semi-Annual Report,* January 1 to June 30, 1944, p. 13, and R. 235. These Nisei so stigmatized were deprived of their birth-right to defend this country. A grateful government branded them "alien enemies" for no reason except that they were of Japanese lineage. This was not only insult but was affront and never was affront more undeserved. Our military commanders in the battle areas knew our soldiers of Japanese ancestry to be reliable defenders of our security. General DeWitt, however, endeavored to lead us to believe that those who were within his military department and their families constituted an actual menace to our security. This was the three-star General who not only extinguished the lights on the Pacific Coast but also

extinguished the lamp of liberty in eight Western States, Alaska and a part of Arkansas.

In late January, 1943, the Government decided to accept volunteers of Japanese ancestry for the 442nd Combat Team and accepted them in April, 1943. It did not re-institute the draft for boys of Japanese lineage until January 20, 1944. See *W.R.A. Semi-Annual Report,* January 1st to June 30, 1944, p. 14.

In the interim, however, General DeWitt had the effrontery to exclude from entering his military department American soldiers of Japanese pedigree who returned from the battlefields and sought to visit their families who were detained in the Tule Lake Center and other concentration camps. There were several instances where he had such soldiers arrested and ejected from his department. However, on April 19, 1943, in obedience to instructions from the War Department, he was compelled to rescind his orders and to allow them unrestricted movement within his military department. See Pub. Proc. 17. Public criticism forced this change. He also had prevented from entry into his military domain veterans of the First World War who were of Japanese origin. He left untouched, however, a dozen Nisei soldiers who were stationed at Byron Hot Springs, Calif., where they were engaged in exacting military information from enemy soldiers who were held as prisoners of war. He let them alone simply because they were under the direct jurisdiction of the War Department with which he dared not interfere. He left untouched also one Nisei immigration officer in Los Angeles who was outside his jurisdiction.

Fortunately, he had no jurisdiction over the several hundred Nisei then serving in G-2 and other branches of the armed forces on the battlefront in the Far Western Pacific where other military commanders recognized their services as being indispensable to the prosecution of successful warfare.

After the reinstitution of the draft for them the number of boys of Japanese lineage in active military service by 1944 had increased beyond the 15,000 figure. These were scattered all over the world. Approximately 3,000 finally served in G-2 in the far Western Pacific battle areas and thousands more served in those areas in other branches of the military service. The remarkable record of the 100th Infantry Battalion, formerly a unit of the National Guard of Hawaii, is well known to the nation. The extraordinary record of the 442nd Combat Team also is well known to the nation. Before the war ended approximately 30,000 soldiers of Japanese ancestry were in uniform. The casualty rate of these soldiers was especially high in Italy. Their families, however, were in our concentration camps.

In the Tule Lake Center ultimately were confined several hundred veterans who had served in 1940, 1941 and 1942 and who had been given honorable discharges in 1942 when they and all males of like lineage of draft age were excluded and arbitrarily classified as 4-C, that is to say, as "alien enemies" for no reason save and except they were of Japanese lineage. Since their release from internment a large number of renunciants from the Tule Lake Center have been drafted into military service and

a number are serving overseas. Their release during 1946-7 from an unmerited internment enabled them to respond and react as normal persons do.

The Attorney General, for some reason or other, keeps up the pretense that renunciants might be a danger to our security. He differs from General DeWitt in that he would permit a few candles of freedom to flicker unsteadily in the darkness of the times. Apparently, it is difficult for an executive officer to cut the Gordian knot of executive blunders by open admission of error. Perhaps it is feared that such action might arouse criticism from a few misinformed and misguided sources. It is apparent that political expediency supplants right and that legality is considered by a few executive officers to be of little importance.

Harassment of citizens held under duress.

On December 5, 1942, two young evacuees were shot dead and ten were wounded by military police at the Manzanar W.R.A. concentration camp. A few newspapers which value rumors higher than truth were quick to spread a false report that the incident had been provoked by disloyal internees. There was nothing sinister in the assemblage however. Its purpose was the presentation of petitions to the W.R.A. officials for a redress of grievances, a matter we have been taught was guaranteed by the 1st Amendment. See *W.R.A. Quarterly Report,* October 1 to December 31, 1942, pp. 37-38. Evidently the right to shoot interned loyal citizens arises as an incident to the power to intern them. The internees were not kept well informed as to happenings outside their prisons. Al-

though they were shut off from the rest of the world they learned what went on in the concentration camps. The troops' violence incident spread fear in the hearts and minds of all the imprisoned persons.

Question No. 28.

After some 73,000 citizens of Japanese pedigree had been incarcerated in these concentration camps and were in imminent fear of being deported to Japan, the Government, in early 1943, devised a special trap to confuse, mislead, deceive and compel them to make a false admission. These frightened unfortunates were required by the Army and the W.R.A. to fill out special questionnaires while they were detained in these prisons. It is to be borne in mind that these questionnaires were required to be filled in by groups of imprisoned citizens singled out from the whole body of citizens merely because they were of Japanese ancestry. Question No. 28 in DSS-Form 304A of the Selective Service System entitled "Statement of United States Citizen of Japanese Ancestry" required them to "forswear any form of allegiance or obedience to the Japanese Emperor", that is, it required them to renounce an allegiance to an enemy government none of them had. (The same question originally also was asked of the aliens ineligible to citizenship who, if they took such an oath thereby would have become "stateless" persons or "denizens" or "subjects" of the United States. The form later was revised so that Question 28 for the aliens required them to swear "to abide by the laws of the United States and to take no action which would in any way interfere with the war efforts of the United States".) The citizens

were required to answer Question No. 28 in its original form.

The W.R.A. Application for Leave Clearance, Form WRA-126 Rev. contained the same obnoxious Question No. 28 for citizens to answer. Never was unfairer question asked of any American citizen. We did not ask citizens of German and Italian lineage to renounce an allegiance to Hitler and Mussolini they never had. Approximately 5,000 citizens refused to answer the question at all because of this discrimination between citizens and because to make such a renunciation involved a false admission that up to that time the person taking such an oath had owed and given allegiance to the Japanese Emperor and had not given an undivided allegiance to the United States. If a citizen answered "yes" he was trapped into making a false admission of allegiance up to that time to Japan. If he answered "no" he was deemed disloyal. If he refused to answer such a false question his refusal was interpreted as a silent admission of disloyalty. Each feared punishment as a criminal if he answered yes or no or refused to answer. At the time each believed and had reason to believe the Government destined him for deportation to Japan and that whatever his answer might be it would be construed against him and result in his imprisonment and deportation. Hitler could not have dreamed of a better trap or devised a more malicious one. The evacuees were terrorized. See *W.R.A. Semi-Annual Report,* January 1 to June 30, 1943, pp. 10-15, where the W.R.A. admits the unfairness of the questionnaire. See also R. 149, 228, 316, admitting the same thing and R. 268-270, showing

protests against the questionnaire and against question No. 28 in particular.

We draw attention to the fact that this oath was asked of interned citizens who had been denied all the rights of citizenship, who were held without expectation of relief and who, to all intents and purposes, had been repudiated by our own Government. Our Government asked a trick question of these citizens of Japanese ancestry which it did not ask of other citizens. Obviously it did not dare ask white, black and yellow skinned citizens on an equal basis to admit or deny any allegiance to Japan or to any other foreign power. The reason is that we have one law but two types of application of the law, one for the popular majority and one for the unpopular minorities. The internees then became convinced that all evacuees and their alien parents were destined finally for deportation to Japan.

The cold-blooded enmity of our Government towards Japanese descended people was not confined to our own citizen and alien residents as is demonstrated by the following facts: During 1943 and 1944 some 1800 Japanese, including their Peruvian wives and children, were kidnapped in Peru as the result of a conspiracy between the United States and Peru.[12] They were transported to this

[12]The secret internment of these Peruvian-Japanese being revealed in early 1946 the State Department hastily washed its hands of the matter. J. Edgar Hoover, Director of the F.B.I., pronounced them harmless, the Justice Department disclaimed any responsibility for their plight and their internment under the Alien Enemy Act was transformed into simple detention for deportation purposes as though they had violated our immigration laws. They passed into the custody of the USI&NS. The Government then contended that inasmuch as Peru denied them re-admission to its borders that

country by our military police and were interned at Santa Fe, New Mexico, and Crystal City, Texas. The purpose of this uprooting was to obtain Japanese from foreign sources to exchange them for prisoners of war held in Japan. Some 1200 of these eventually were transported to Japan because of their despair of being repatriated to Peru or being relocated in this country. The remainder, denied access to Peru, were scheduled for removal to Japan under a claimed authority of the Alien Enemy Act.

The Tule Lake Center.

The Tule Lake Center was situated in Modoc County, California. The post-office inside that Center was called Newell. The camp was erected on an ancient lake bed which had become a tule swamp and had been drained. It was some 37 miles south of Klamath Falls, Oregon, the

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they were deportable to Japan because their lack of admission credentials and their inability to speak, read or write English or Hebrew rendered their presence in the United States unlawful.

A number of them were transferred from Santa Fe to Wilmington, Cal., and two to San Francisco. Deportation being imminent two test proceedings in habeas corpus (Nos. 26139 and 26140) were brought in the District Court below on June 25, 1946, and the deportation program was brought to a forced halt. Thereafter, various government agencies, somewhat irked, chagrined and shamed consented to have the cases held in abeyance pending counsel's efforts to persuade the Peruvian government to permit their repatriation to Peru. Thereafter, a number of the families were returned to their homes in Peru but some 295 have been denied that right to this day. In the interim the remainder, pursuant to agreement, have been relocated in the United States and are gainfully employed. Those who are situated at Seabrook Farms, N.J., still are protected by the USI&NS through a theoretical form of custody which is maintained over them for their protection against exploitation in the event they seek relocation elsewhere. Under relief legislation (8 USCA, Sec. 155(c), as amended July 1, 1948, 62 Stat. 1206), which was sponsored by Thomas M. Cooley II, all of these ultimately will be granted permanent resident status in the United States.

nearest town of any size. It was at an elevation of 4105 feet and surrounded by barren mountains. High velocity winds constantly swept over the camp and in summer the dust laden air made breathing difficult and drove the inmates indoors. In winter the camp was covered with snow and the shacks in which evacuee families lived and the barracks in which unmarried persons lived were cold. The flooring of the shacks and barracks, which also were shacks, contained almost as much crevice as flooring through which the wind swept, the summer dust accumulated and the winter cold penetrated. The roofs and outside walls were covered with tar-paper. Coal-burning stoves filled the air with soot but gave off insufficient heat to warm the shacks. Coal was scarce and rationed. The internees roasted in summer and froze in winter. The W.R.A. staff and personnel were comfortably housed in well constructed homes and apartments situated in a choicer section of the Center. These were properly ventilated, heated and lighted. The Caucasian dwellings were fully equipped with bathtubs, showers, modern stoves for cooking purposes and up-to-date oil heating stoves to protect them from inclement weather. Needless to say, they were supplied with adequate quantities of fuel oil and the homes had running hot and cold water. The shacks of the internees had none of these things.

The food rationed to the internees was neither sufficient in quantity nor appetizing in quality. It was not comparable to army rations. The Caucasians employed by the W.R.A. did not want for anything that could contribute to their comfort. For their benefit the authorities maintained a canteen and a cafeteria where they obtained excellent

food at minimum prices and also tobacco tax free. A recreation club where they obtained food and services at like trifling cost and free entertainment also was provided for their convenience. They received excellent personal services from internees hired at peon wages to wait upon them as domestics and to perform menial tasks. (R. 285-6.) The bulk of the onerous and irksome work in the administrative offices was performed by internees at like slave labor wages. The majority of the Caucasian government employees enjoyed their sojourn in Tule in comfort and leisure. None of the internees did however.

A high barbed wire steel fence surrounded the Center. Elevated block houses in which armed sentries were stationed faced the entrance and like watch towers were situated on the rims of the encampment, on the adjacent hill and the nearby mountains. Armed guards kept the camp under surveillance with guns trained on the camp. Sentries walked their posts carrying rifles. A detachment of military police was quartered in one corner of the Center where a contingent of armored trucks and tanks also was stationed. R. 225-6, 291-2.

There was little or nothing for a majority of the internees to do to occupy their time and to prevent ennui and insanity except to indulge in futile pursuits, to worry and to pray. Their prayers were not answered. They had little material available to devote to handicraft purposes to divert their attention. With the exception of a few pieces of scrap material they could find neither wood nor metal to work. The few pieces of wood they found they polished and fashioned into useful household appliances and articles of adornment. They were forbidden to dig a

few inches into the soil for the small sea-shells they were wont to polish with sand and transform into such ornaments as flowers, crosses and rosaries which they colored with rouge and nail polish for lack of other materials. The administrative and police authorities finally prohibited them from digging for these shells because of a claim that the digging between the rows of shacks might render uncomfortable the driving of automobiles through the camp by the W.R.A. officials.

Prior to the time the Tule Lake area became noted chiefly for the oppression of the internees it was well known as a stopover place for the annual migration of millions of ducks, geese, gulls, pelicans and other birds. The Caucasian W.R.A. employees were amply supplied with wild ducks, geese and deer in the hunting seasons. They feasted while the internees fasted. The internees were denied a diet of these delicacies because the Caucasians did not believe in sharing their abundance with their yellow brothers and sisters. Perhaps the authorities in charge believed that if they enabled the internees to partake of this natural fare the authorities might be criticized for pampering the prisoners.

Segregation plan.

On May 25, 1943, the project directors of the W.R.A. unanimously agreed to set up a separate center for quartering aliens and their families who desired to be repatriated to Japan. On June 25, 1943, Mr. Dillon Myer, the national director of the W.R.A., recommended that the Tule Lake Center be transformed into a segregation center. See W.R.A. *Semi-Annual Report,* January 1 to

June 30, 1943, pp. 49, 50. At Denver, on July 27, 1943, Mr. Myer conferred with the project directors and outlined the segregation plans. See W.R.A. *Semi-Annual Report,* July 1 to December 31, 1943, p. 99. Residents of the Tule Lake Center protested against opening the center to persons who wished to be repatriated but the protest was ignored. In August, 1943, the W.R.A. conducted a survey in the center and each internee was asked whether he desired to remain in the center or to be removed to Japan or to be transferred to another W.R.A. camp. Approximately 10,000 preferred to remain in the center and were permitted to remain. Approximately 5,000 residents, citizens and aliens, applied for transfer to other camps and were transferred. R. 227, 279, 335.

Denial of leave clearance in other centers caused transfer to the Tule Lake Center.

The prerequisite for admission to the Tule Lake Center from other war relocation centers of persons who did not wish to be sent to Japan was a denial of leave clearance in those centers. A transfer to this intended segregation center did not mean that the transferee was a disloyal person or hostile to the United States. This was the center where aliens desiring repatriation originally were intended to be segregated from citizens and aliens who wished to remain in the United States. It was a segregation center, however, where no segregation took place. R. 227, 279. A denial of leave clearance in other centers and in this center depended entirely upon the whim and caprice of the director of the W.R.A. and, consequently, upon the whim and caprice of his agents. Leave clear-

ances were denied the following classes of persons, to wit, (1) those who applied for repatriation to Japan, (2) those whose answers to Question No. 28 were deemed to be unsatisfactory, (3) those who had stated their loyalty to or sympathy with the United States but of whom the director had doubts, (4) those whom the director arbitrarily declared not to be eligible for leave and (5) those who were eligible for leave but wished to live in the Tule Lake Center in order to be with members of their immediate families." See W.R.A. pamphlet entitled "Segregation of Persons of Japanese Ancestry in Relocation Centers", Wash., D. C., August, 1943.

A denial of leave clearance could be based upon rumor, hearsay and suspicion or upon no reason whatever except caprice. It could be based upon arbitrary factors such as the fact that a person was a kibei, or had investments in Japanese securities or his next of kin in Japan. It could be based upon arbitrary factors of which the transferee was kept ignorant and upon factors which would shock the conscience of sober-minded persons. The prospective transferee, unaware of the reason for the denial of his application for leave clearance and of the nature of any accusation against him, if any existed, and in ignorance of the contents of the dossier maintained by the director and without hearing of any kind or chance to defend himself against rumors and unjust charges, was ordered transferred to the Tule Lake Center and was forcibly taken there. See *W.R.A. Manual,* Chaps. 110 and 60.10. By regulations established October 15, 1943, a person detained in this center was permitted to re-apply for

leave clearance. See *W.R.A. Handbook,* Secs. 60.11.1 to 60.11.11, inclusive.[13] Refusals of leave still depended upon whim and caprice, consequently, grants of leave continued to be subject to the same defects and vices. Unfortunately, however, the W.R.A. in October, 1943, closed out its relocation office in the inner section of the center where the internees were confined and did not reopen it until June, 1945. R. 229-230, 255. Because of the difficulty of obtaining special permits to leave the inner area and enter the administrative section of the center to inquire about the possibility of leave clearance and the danger from pressure group members to which such a move exposed a person rendered it practically impossible for an internee even to apply for leave clearance. R. 229, 255, 256, 298.

When the 5,000 willing transferees had departed approximately 8,000 persons from other camps were brought into the Tule Lake Center. About 5,000 of these were aliens who, by reason of their long imprisonment and impoverishment, had expressed a desire to be returned to Japan on exchange ships and who, therefore, were deemed to be loyal to Japan. R. 227. Many of them were parents who desired their children to accompany them to

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[13]The drafters of the W.R.A. Manual and Handbook sought to outdo our Founding Fathers in establishing a government. Unlike them, however, in writing the arbitrary organic rules and regulations by which they rode roughshod over the internees they forgot to add a Bill of Rights. Their manual and handbook, as the handiwork of drafters unfamiliar with democratic principles, is nothing but a Bill of Wrongs. When the truth finally is published concerning the W.R.A. and its mismanagement of these concentration camps and the cruel dominion it exercised over the internees it will be found that many parasitic members of the W.R.A. bore a hatred of the internees until these centers were about to be closed and the hosts to make their departure.

Japan. The remaining 3,000 were citizens to whom the W.R.A. arbitrarily had denied "leave clearance".

Being sent to the Tule Lake Center from other camps had nothing whatever to do with disloyalty on their part. These aliens were not hostile to the United States and did not menace our security. They then had been imprisoned for about two years and were impoverished as a result and when invited by the Government to repatriate to Japan to begin life anew they accepted the offer. They were disillusioned by their imprisonment but they were not hostile. A number of the citizen family members accompanied their alien parents to the center to avoid family separation. The majority of the aliens and citizens who were transferred to the center from other camps were transferred simply because they arbitrarily had been denied leave clearance by the W.R.A.

The 10,000 residents who remained in the center by preference were citizens and aliens. Among these were aliens who desired repatriation. The great majority of these, however, also were citizens and aliens and their families who had been denied leave clearance and who, although fearful of deportation, still hoped and wished to remain in the United States. R. 227-8, 336. It makes little difference that some people, nursed on jingoist literature, may have considered them disloyal. They were neither disloyal nor hostile. Disloyalty and hostility are not criminal because they are mere states of mind. Our laws are not supposed to inflict punishment for mere states of mind. There are laws, however, against disloyal utterances and hostile acts and such overt things are

punishable. But it would be false to accuse these people of disloyalty, hostility or overt acts against us. While they did not menace us there is no doubt that our Government was hostile to them. Moreover, it was unfair and dishonest in dealing with them. It mistreated them, wrecked their fortunes and ruined their lives. In treating these citizens and resident aliens as though they were dangerous enemies the Government stigmatized them as such in the public eye and they were compelled to suffer from public hatred.

There were many reasons why residents of the center preferred to remain there rather than be transferred to other camps in the mid-west. They were established in the center with their alien parents and family members from whom they did not wish forever to be separated. Many preferred the climate of California to that of other states. Many feared that if they were removed from California they would never be able to return. Many good and sufficient reasons existed for them to express a preference for remaining in the center. R. 151, 279, 336.

The abandonment of segregation plans and adoption of Government's policy of preparing internees for life in Japan was productive of violence and fear.

The so-called segregation plan the W.R.A. had decided on July 27, 1943, to put into effect was never completed. It was abandoned on October 15, 1943, because of the complex administrative, transportation and other problems involved in such an undertaking. R. 227.

The individuals desiring to be repatriated to Japan were desirous of becoming as Japanese as possible and

had been led by the Government to believe and expect the center would be one where only intended repatriates would be harbored. The residents who already had been established there and remained there resented the presence of the intended repatriates and regarded them as intruders. They resented the repatriates' desire to become foreigners, their efforts to adopt Japanese customs, manners and practices, their unwillingness to use the English language and their exclusive use of the Japanese tongue in the center which housed thousands of American citizens and resident aliens who hoped to remain here. Each group protested the presence of the other to the W.R.A. in vain. R. 227, 228, 230. Those hoping to stay in the United States asked the W.R.A. to segregate the two groups in the center. The W.R.A. toyed with the suggestion and contemplated a re-segregation by fencing them separately and wound up doing nothing. R. 352-359. It was a blunder of the first order. The motives of the W.R.A. officials in refusing to re-segregate the groups were peculiar and unjustifiable. They refused because they believed re-segregation might indicate a weakness on the part of the Government in yielding to the demands of the aliens and because it also might be regarded as a confession by the camp authorities of an inability to maintain order and discipline in the center. See R. 279-280. As the result the intended repatriates were quartered indiscriminately among those desiring to remain here. It was the failure of the W.R.A. to carry out the segregation plan that enabled the alien pressure groups to organize in that center and to embark upon their campaign of propaganda, intimidation and violence that gave impetus to the renunciations.

The policy of the W.R.A. that gave rise to the internal coercion which contributed to the renunciations.

Recognizing that the center then contained a large number of aliens who desired to be repatriated to Japan and to take their children with them the W.R.A. adopted the policy of assisting in preparing them for their future existence in Japan. The authorities in charge deemed it essential that they be taught and become proficient in the Japanese language, and become acquainted with Japanese culture and customs and generally to be educated as if they were being educated in Japan. R. 231, 241-2. It was the general lack of proficiency in Japanese that later accounted for the prohibition against the internees' use of English which was enforced by the pressure groups which soon rose from the ranks of the intended repatriates. To this end the W.R.A. inaugurated and fostered the Japanese language schools which soon assumed a dominant position in the center and carried on a systematic campaign to indoctrinate American children with a foreign ideology. It permitted the teaching of physical education courses patterned after schools in Japan. It was this that led to the mass exercises, marching exhibitions and other activities of the pressure group which arose from the midst of the intended repatriates and invoked the internal terror in the camp that contributed to the flood of renunciation applications. R. 250, 252, 259, 296-7. These practices were tolerated in the center because the official view was that all the interned citizens and aliens eventually would be sent to Japan and that, in consequence, it made little difference what happened to them. These things created a genuine fear in the internees that all of them would be deported and that open opposition to the

pressure groups would endanger their own lives and the safety of their families when they were deported.

Troop violence intimidated internees.

On November 1, 1943, the authorities held a meeting in front of the administrative building. All interested internees were invited to attend and to discuss camp problems with Mr. Best. At the time a political struggle was being waged between two factions of the W.R.A. management. One, under Mr. Best, sought to establish an appointive system for the representation of the internees. The other, under Mr. Black, the assistant project director, sought to establish an elective system for their representation. Each had his respective sympathizers among the W.R.A. personnel and the internees. The particular question for discussion and decision was the type of representation to be determined upon for the internal government of the inner area. The assembly was authorized. That right is one for which the 1st Amendment was added to the Constitution. The meeting had official sanction. Mr. Best and various spokesmen for the internees spoke. No physical pressure was put upon anyone. That building was not surrounded by internees. As an excuse for what later was to occur some of the Caucasian members of the W.R.A. have tried to convince themselves that a few of them received an impression that the crowd was imprisoning the administrative officials within the building. If any member of that staff entertained any such impression he was an alarmist and subject to delusions. Neither Mr. Myer nor Mr. Best received any such impression. That building was an extensive U-shaped eight-

sided building containing six doorways. An adequate number of armed internal security police were inside and outside. No disorder occurred and none was threatened. No threats of violence were made. Having learned that Mr. Myer, the director of the W.R.A., had arrived in camp upon an inspection tour members of the crowd called out requesting that he address them and hear their grievances and suggestions concerning camp conditions. Suffice to say Mr. Myer welcomed the opportunity and addressed them from the open porch fronting the building, heard their suggestions and took on the spot measures to correct many of the conditions of which internees complained. R. 154, 339.

Unfortunately, while that meeting was being held several internees while walking through the corridors of the hospital building situated some distance away were accosted by a staff physician. A fight ensued and he was beaten. From all reports he was the aggressor. It was the general opinion that he received his just desserts.

On November 4, 1943, eighteen evacuees in the center were escorted forcibly by members of the internal security police to the police squad room where they were severely beaten with clubs. A number of them were beaten into insensibility and all were hospitalized. R. 231, 232, 393. See W.R.A. *Semi-Annual Report,* July to December 31, 1943. See American Civil Liberties Union "*Union News*" of August, 1944. The authorities in charge ever since have been reluctant to divulge the result of their investigation into the cause of this outrage. The W.R.A. suppressed news of the violence. The residents of the center learned of the matter and became panic stricken because

of the lack of protection accorded them by the federal authorities in charge.

On the night of November 4, 1943, a few youths trespassed into the motor equipment area where they were allowed during the day but forbidden at night. The gates were still open. Undoubtedy they were looking for scrap material to use in their shacks. Any material that could be found was put to some mechanical or artistic use by the internees. The camp was dark as pitch at night except for the little light shed by distantly spaced electric lights. All the houses were set up in long rows and each resembled the other. They could be distinguished from one another only by persons long familiar with a given area. It was difficult enough to distinguish one habitation from another during daylight and almost impossible to do so at night. There was, of course, a wide difference between the shacks of the internees and the dwellings of the Caucasion personnel. If the youths approached Mr. Best's house they evidently were not aware of it. An unidentified alarmist notified Mr. Best that he was on the verge of being attacked by lurkers. Reflecting in a measure the fear felt in the camp, Mr. Best grew alarmed and called in the troops. This is the "incident" of which the W.R.A.'ers later were accustomed to speak in whispers. Mr. Best saw neither hide nor hair of any would-be attackers. Apparently no one else did either except the unidentified alarmist. Members of the W.R.A. were in the habit of seeing spectres of their own creation. It was a mental defense mechanism by which they convinced themselves the camp was alive with danger. The danger was to the internees, however, and not to the W.R.A. employees. R. 340, 393.

The troops marched and the tanks rolled into the inner area. A forced search was conducted from shack to shack. Lawless martial rule was imposed but the censors carefully deleted the words "martial law" from the internees' correspondence because those disagreeable but accurate words offended the official censor's sense of propriety. See *"The Spoilage"*, 147, 160. The internees were driven indoors by bayonets and all during the night and for approximately twelve days and nights following the troops conducted a house to house search for contraband and at the point of bayonets forcibly searched every man, woman and child in the area. R. 231-2, 340-2. It was sport to the soldiers, a Roman holiday for the Caucasian W.R.A. personnel and terror to the internees. The press was in an uproar of delight and featured lurid front page stories of a terrible riot at Tule. Troop violence, however, is not called a riot—it always is justified as a necessary military measure taken to suppress violence. Institutionalized W.R.A. employees kept the rumor factory busy. A riot that never occurred was magnified by exaggeration of lies into a rebellion. The public was shocked by the stories but the internees were horror stricken by what they witnessed and suffered. The forcible 12-day search resulted in the lawless seizure of scores of innocent internees who were thrown by the troops into the stockade, an "isolation area", a prison within a prison, where many were forced to languish for months without charges being filed against them and without hearings being accorded them. R. 342. The violence of the troops was real, however, and the dread of troop violence was communicated to every internee. R. 232.

The Army authorities and Mr. Best had asked the internees to meet on the morning of November 5, 1943, to elect block representatives to seek an adjustment of their grievances. The group approached the administrative section of the camp. The troops dispersed them with tear gas bombs (R. 232, 340) and thereafter picked up the elected representatives and cast them into the stockade. Their subsequently elected successors likewise were jailed until the internees refused to elect additional representatives to meet the same experience. The procedure was diversion for the troops, amusement for the W.R.A. and terrifying for the internees. In such a manner the democratic method of the internees' representation in their internal government was smashed.

The W.R.A. established an elaborate police system composed of Caucasian policemen. R. 282-3. The members evidently had been picked because of their avowed contempt of Japanese generally and for their capacity for brutality. They constituted a veritable gestapo. They appeared to have been recruited from the ranks of savages. They were given uniforms, guns and clubs and so they proceeded to use them. They filled the squad room with enormous quantities of hand grenades, tear gas bombs and ammunition and had a constant itch to use these. They stalked about the Center during the day and prowled at night in groups of twos and threes, making a display of force and intimidating internees whom they regarded as contemptible Japs. They were given to striding into the inner area and exhibiting their hostility. Without warning they were wont to descend upon the internees'

homes, carry on forcible searches and seizures in the houses and barracks, herd men, women and children into corners and search them. R. 233, 234, 282-285. They treated the internees as though they were dogs or chattels. The internees dreaded these lawless police more than they feared the lawless troops.

The Army carried out sporadic raids upon the quarters of residents and conducted forcible searches and seizures of individuals until the troops were relieved from duty at the Center about March 1, 1944. Thereafter, however, the internal security police took over and conducted hundreds of forcible searches and seizures for months until the renunciation program had been concluded. Hundreds of internees were seized during all hours of the day and night and were thrown into "The Stockade", the special prison in the center originally opened by the troops and thereafter maintained by the internal security police. These policemen looked upon the seizures as a species of amusement. Hundreds of internees were lodged in the stockade and there languished for periods ranging from one day to eleven months without hearings being given them on the reason for their enforced incarceration. See R. 234, 272-278, 283-284, and The Spoilage, 283-303. Suffice to say that every person confined to that camp was kept in a constant state of worry and fright that he or she might be seized in the day or night and be thrown into the stockade and there be held incommunicado from family and friends. These practices terrorized the internees. None of them was free from this constant threat of violence and mistreatment and none was and none could have

been free from the fear these raids engendered in their minds.

The oppression and violence by the internal security police officers steadily grew worse until conditions alarmed Mr. Myer. He removed the chief of police and in August, 1945, sent J. H. DeWitt as his successor. This new chief reorganized the police force, got rid of its menacing members and engaged new officers. He made it his personal practice to walk about the inner area or colony at all hours of the day and night alone and unarmed. His intelligent appraisal of conditions, the example he set by his practice and his sympathetic attitude towards the internees was appreciated and did much to allay their fears. Suffice to say that he is not related to the General who bears the same name.

The Japanese language schools at Tule.

When the aliens desiring repatriation to Japan had been brought into the Tule Lake Center and the segregation plan abandoned on October 15, 1943, the situation was unpleasant to those aliens who wished to be separated from those who wished to remain in this country and disagreeable to the latter. The aliens desiring repatriation wished to become as Japanese as possible. The aliens who desired to remain here wished to become as Americanized as possible and the citizens wished to remain American. Protests to the W.R.A. from both groups were wasted on deaf ears. R. 226, 227. The W.R.A. was insensible to the problems of mere Japanese and indifferent to their sufferings. R. 279-280, 282.

Nevertheless, the W.R.A. sponsored Japanese language schools in the Center and made it compulsory for all children of school age to attend school. R. 241, 242, 249. There was only one American high school and one grammar school maintained in the Center where 18,000 internees were crowded into a camp intended to house 15,000 persons. Attendance at the American schools was optional. The Japanese language was not taught in the American schools. Consequently, the W.R.A. fostered and initiated the opening and maintained the Japanese language schools but thereafter did not exercise active supervision over them. Its primary purpose in fostering these schools was to enable those who wished to repatriate to Japan to have their children educated in the Japanese language, customs and culture in preparation for their intended future life in Japan. R. 162, 241, 242, 249, 281-2. The W.R.A. superintendent of schools protested the existence of these schools and suggested that the Japanese language be taught in the American schools and the schools be scrutinized closely by the authorities but his suggestion went unheeded. Other protests were made and were ignored. R. 281-2.

Unfortunately, there were far too many children to attend the one American grammar and the one American high school. Consequently, a majority of the parents found themselves in a position where they had to send their children to the W.R.A. fostered Japanese language schools. The W.R.A. did not appoint the teaching staffs of these radical schools and did not subject them to supervision. Inasmuch as they were designed to prepare chil-

dren for life in Japan the American children who attended and had no intention of going to Japan were subjected to systematic indoctrination of Japanese sentiments by the alien teachers. The culture which the pupils were supposed to glean from these schools turned out to be the "kultur" characteristic of prewar Germany and Japan. In this manner the alien groups, with the full knowledge, consent and assistance of the authorities in charge of the Center, came to dominate and control the educational system which prevailed in the Center. Alongside of these Government sponsored Japanese language schools there developed an even more noxious type of language school which was controlled by aliens who desired to be repatriated to Japan. R. 257, 293-295. Thus it came to pass that the Government, through the medium of allowing the language schools to operate actually tried to make the children anti-American by permitting them to be subjected to the indoctrination of enemy ideologies. R. 241-242, 257, 281-282, 293-295, 250-253. The fact that these schools were fostered and maintained by the W.R.A. led the internees to believe that it was the policy of the Government to allow this indoctrination because it intended to deport all of the internees to Japan and that, through the medium of these schools, the children would be prepared to take up the reins of their lives there when they were deported along with their parents.

The rise of the pressure groups.

When the transfers between the centers were halted and the segregation plan was abandoned on October 15, 1943, the W.R.A. closed out the "relocation office" in the

inner area of the Center where the internees were confined. That office was not reopened until sometime in June, 1945. See R. 229, 255. The closing of that office was a serious blunder. It seemed to confirm the internees' belief and intensified their fear that they would not be permitted to relocate in this country and that the Government intended their indefinite detention for the duration of the war unless they were deported sooner and, in any event, their final removal to Japan. By reason of the terror that developed in the inner area internees did not dare apply for permits to enter into the administrative area to make inquiry concerning the privilege of obtaining leave clearance for fear they would be considered to be informers and be punished by the pressure groups operating in the inner area. R. 229, 255-256.

Pressure groups of aliens commenced to form in the Center immediately after they had been dumped into the Center from other camps. The language schools came under their control. The purpose of these groups was to gain control of the internees and to force all the aliens to apply for repatriation and to compel the alien parents of American children to apply to take their children to Japan. As they gained strength among the aliens they sought to persuade and then to intimidate and coerce citizens to do likewise. Sporadic acts of violence against aliens and citizens who opposed them flared up repeatedly. A few examples of the reported acts of violence committed by the gangs against those who opposed their movement or who were deemed to be "informers", called "inu" in Japanese, which means "dogs", are as follows: On June 12, 1944, Tasaku Hitomi was beaten by assail-

ants, lost his sight for some time and suffered a brain concussion (R. 349); on June 13th Minekichi Shimokon, chief of the colonial police, was threatened and in fear resigned and was transferred from the camp; on June 14th Mr. Moritome was assaulted and suffered a fractured skull; on June 15th Henry Shiohama was threatened with violence; on June 16th Mr. Kurihara was severely beaten and on July 1st Aizo Takahashi was beaten. See also, The Spoilage, 264-271.

Thereafter the number of assaults increased in tempo. These acts of violence instilled a deep fear in all the internees. The more powerful the alien pressure groups became the more open their activities became. It grew to be dangerous for anyone to speak against these groups or openly to oppose them. The whole camp was caught up in a grip of fear that never let up but increased in intensity until the renunciation program was completed in July, 1945, and thereafter until the leaders and active members had been removed to Japan.

Shooting of Okamoto and murder of Hitomi increased internees' fears.

On May 16, 1944, James Okamoto, a citizen internee and driver of a W.R.A. construction truck, stopped his truck carrying a construction crew and a load of plasterboard at the entrance gate, produced his badge and credentials at the post and was shot to death by an M.P. sentry. The responsibility for the unprovoked killing rested on the Army. The W.R.A. authorities complained to the Colonel in charge of the troops. Secretary of the Interior, Harold L. Ickes, head of the W.R.A., appalled by this incident, denounced the shooting. The Army de-

prived its sentries of rifles and substituted revolvers. An Army board exonerated the young soldier but transferred him from the Center. This killing of this innocent boy spread terror through the camp and the internees lived in constant fear of additional acts of troop violence. See, R. 232-233, 292, and The Spoilage, 249-261.

On July 2, 1944, Yaozo Hitomi, an alien internee who had the management of the canteen in the Center, was stabbed to death at night in front of his brother's house. R. 233, 292, 328. Witnesses heard the assailant and his companions running from the scene of the crime. Although the killer was not apprehended it was the belief of all the internees that the killer was a member of one of the pressure groups performing a mission for it. The fact that a murderer was loose in the crowded camp added to the terror in which the internees lived. The W.R.A. was unable to track down the murderer. So great was the fear in which the internees held the leaders of the pressure groups that only a few were willing to testify as to the facts surrounding the case and these were able to shed no light on the matter. R. 233, 293, 349, The Spoilage, 271.

THE RENUNCIATION STATUTE.

Title 8 USCA, Sec. 801 (i), enacted as a special wartime measure by the Act of July 1, 1944 (58 Stat. 677), amending Sec. 401 (i) of the Nationality Act of 1940, which was rendered inoperative by the Joint Resolution of Congress of July 25, 1947, 61 Stat. 454, reads as follows:

> "A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:
>
> (i) Making in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense;"

Passage of this statute was obtained by the Department of Justice for the special purpose of procuring renunciations of native-born Americans of Japanese lineage. It was a special species of discriminatory class legislation. It was applied to them as the legal implementation of the government created hysteria and terror which induced the renunciations. It was originally intended by the Department to be used as and was used as an instrument to induce the few leaders of the pressure groups to renounce so that they then could be removed to Japan through the medium of exchanging them for prisoners of war. See Mr. Burling's affidavit, R. 157-161, setting forth the legislative purposes for which its passage was procured and the limited application to which the statute was intended to be put. Unfortunately, it was the device which accounted for all the renunciations and it is to be noted that the statute was applied only to persons of Japanese ancestry to the exclusion of citizens of other ancestry. That the statute was framed to procure renunciations solely from citizens of Japanese pedigree and that it was applied only to such a discriminatory

purpose is set forth in Mr. Burling's affidavit. R. 157-161, 275. As such it is unconstitutional as applied. See *Yick Wo v. Hopkins,* 118 U.S. 356; *Ah Sin v. Whitman,* 198 U.S. 500, 507-8; *Yu Cong Eng v. Trinidad,* 271 U.S. 500, 528; *Truax v. Raich,* 239 U.S. 33; see also, *Sims v. Rives* (CCA-DC), 84 Fed. (2d) 871, cert. den. 298 U.S. 682, and *U.S. v. Yount* (DC-Pa.), 267 Fed. 861, holding that equality is guaranteed by the due process clause of the 5th Amendment.

Reign of terror by alien leaders.

In the middle of August, 1944, the aliens who had applied for segregation and were scheduled for repatriation to Japan and who belonged to the active resegregationist groups (R. 331, 345-349) organized an "innocents" organization to further those purposes. R. 258. The new organization was called the Sokuku Kenkyu Seinen Dan. It later divided into two sections, one composed of men being called the Sokuji Kikoku Hoshi Dan and one of boys being called the Hokoku Seinen Dan. R. 331, 351. These two ultimately became known by the abbreviated names of the Hoshi Dan and the Seinen Dan. A similar "innocents" organization for women and girls was set up and called the Joshi Dan. The specific aims of the alien leaders of these groups were to persuade citizens they had been deprived of citizenship and that, in consequence, they should make formal renunciations of their citizenship and seek to be transported to Japan and also to compel all aliens to request repatriation rather than stay in permanent or indefinite internment in the United States. R. 231, 258, 265, 392, and The Spoilage, Ch. XII, 303, 322.

The membership of the three organizations, however, was made up of innocent persons who feared and believed they and their families were to be transported to Japan. To be prepared for life upon their arrival there they commenced to indulge in calisthenics and marching practices characteristic of schools in Japan. R. 351. Likewise the membership set about to attend the Japanese language schools maintained in the Center so as to learn the Japanese language, the customs and ways of life of the Japanese simply in preparation for their expected life there upon deportation.

To accomplish their purposes the alien leaders of these organizations engaged alien thugs skilled in judo and kendo to canvass and persuade, by word and deed, all the citizens to renounce citizenship and then to apply to be sent to Japan and, by like methods, to compel the aliens who had not sought repatriation to demand to be repatriated. R. 258, 260. The purpose of the leaders was evident. They sought in this manner to gain prestige when they themselves arrived in Japan. Under their leadership the number of acts of violence against those who opposed their movement increased. On October 15, 1944, Morihiko Tokunaga and two companions were beaten by gangs armed with clubs and on October 30th Toshikazu Terasawa was knifed for speaking against the segregationists. The internal reign of terror grew worse and the internees lived in daily fear of their lives.

Thereafter, a series of assaults were made on citizens by the thug agents of the leaders of these pressure organizations. These acts of violence were committed in the inner area. The internees feared to report many of these

to the authorities because of the risk of danger from the gangs. The camp had little confidence either in the desire or the ability of the authorities to protect them from the rule of terror prevailing there. An authority that had refused to segregate those desiring repatriation from those desiring to remain in the United States, that had fostered the Japanese language schools and had authorized indulgence in mass calisthenics and groups to parade and drill and aliens to carry on their systematic propaganda campaign and persistent intimidation of the internees was not an authority in which terror stricken internees could repose much confidence. The internees were subject to the double pressure of oppression from the leaders of the pressure groups and the internal security police force. The camp authorities were not only apathetic to their plight but actually were disinterested because, after all, the internees were nothing but Japs. The official view and attitude of the authorities there was that all the internees eventually were to be sent to Japan and that, in consequence, it made little difference what happened to them. R. 281-2.

The Department of Justice solicits renunciations from pressure group leaders.

Thereafter, on October 6, 1944, Attorney General Francis Biddle set up Secs. 316.1 to 316.9, inclusive, of Title 8 of his *Nationality Regulations* providing the procedure for renunciations of nationality authorized by the renunciation statute, Title 8 USCA, sec. 801 (i).

Mr. Burling became acutely aware of the activities of the leaders of the pressure groups on December 5, 1944. R. 167. He watched them in operation. He observed the blowing

of the bugles at 6:00 A.M., gymnastic exercises, drilling, alien patriotic observances, uniforms, emblems and insignia. He talked with the leaders and learned their purposes. The activities of these organizations were entirely open. The officers of these organizations in government buildings had been duly assigned to them by the W.R.A. authorities. R. 249, 257, 293. He specially solicited the renunciations of certain of the leaders he contacted and each of those approached renounced at this invitation. He then obtained the approval of the Attorney General thereto. R. 169.

Cancellation of mass exclusion orders.

On December 19, 1944, General Pratt, successor to the command of the Western Defense Command, promulgated Public Proclamation No. 21 (10 F.R. 53), effective January 2, 1945, cancelling the 108 mass civilian exclusion orders which previously had been issued by General DeWitt. This was an executive finding and judgment that none of the detained persons were deemed dangerous except those who later were given individual exclusion orders. Mr. Burling expressed the opinion in his affidavit (R. 197) that the lifting of the ban did not constitute a finding of non-dangerousness. But the sequence of the Army's proceedings show him to be in error. The lifting of the ban was an unconditional release to the girls and women. The Army took the view that they could be classified as safe without further investigation. As to the males, individual hearings before army boards were ordered. As the result of these hearings a great many males were released from exclusion from forbidden areas. Others received individual exclusion orders. See, *The Spoilage,*

pp. 334, 336-7. These rulings clearly constituted executive findings that some males were and some were not deemed dangerous at that time. Still later even these individual exclusion orders were cancelled, evidently a finding that the war had faded so far into the background that none of the individuals any longer could be deemed dangerous.

What the Government did to stop the terror reigning in Tule.

The terror that had been reigning in Tule was kept secret from the public and officialdom by the camp authorities. The W.R.A. officials were initially responsible for the rise and development of the pressure groups. They observed the program of active terrorism in actual operation. They were aware of the organizations' efforts to infect the citizens with the virus of their disloyalty yet did nothing about it. The W.R.A. gave the resegregationist groups office space from which they conducted their nefarious campaigns. R. 352. They left these helpless citizens to be exposed to an inoculation of pro-Japanese sentiment. They were aware of the organizations' efforts first to induce and next to compel all the citizens to renounce. They watched the rise of the terror and stood idly by and did absolutely nothing to protect the citizens from it. R. 238, 239, 243-247, 261-262.

The first outside government observer to notice the deplorable conditions at Tule was John Burling of the Department of Justice. He had been instructed to visit Tule because his department had been besieged with requests for renunciation applications. Obviously, he was not sent on a mission to satisfy a mere curiosity or suspicion on the part of the Department that the requests arose from

coercion. He knew, as did his Department, that the smoke from Tule conclusively indicated the fire of terror there raging that had caused the requests. The W.R.A. was in charge of that Center and not the Department of Justice. Consequently, it was knowledge that the W.R.A. had been derelict in its duty to the confined citizens that induced the Department of Justice to send its agent to the Center.

Mr. Burling arrived at Tule on December 5, 1944. R. 165. On his own initiative he questioned some 62 internees, none of whom informed him that coercion had induced their requests for renunciation applications. R. 166. What he omits to point out is that he could not expect applicants then held in terror to volunteer they were under coercion in so doing.

Odd practices at Tule.

The internees were not kept well informed as to current happenings in the outside world. The outer world was terra incognita to them but they did know what went on in the Center. Their isolation led to much speculation and worry as to what the future held in store for them—what the Government intended to do with them. This gave rise to doubt, uncertainty, worry and then to mental confusion, fear, despair and finally, under the existing circumstances, outright terror. The rumor mill was rife. Staff members of the W.R.A. became interested in the psychological reactions of the inmates of this governmental institution. Experiments in rumors were conducted in the Center because some of them had nothing must else to do except make light sport of the internees' misfortune. The anthropologist on the staff delved into psychological

research. R. 307. The internees were considered to be guinea-pigs. These were odd practices to indulge in but, apparently, the Caucasian overlords, having become somewhat institutionalized themselves, reflected in a slight measure the abnormal mental conditions of the internees herded on the other side of the fence.

The administrative authorities set up a spy system through the medium of the internal "colonial police" force which it recruited from the ranks of the evacuees. This okrana supplemented the Caucasian gestapo. The internees dared not complain of their mistreatment because a complaint endangered their security. The pressure gangs were in full swing. The constant threat of the troops, the Caucasian security police, the internal colonial police and the pressure groups with their apparatus of oppression was too much for the camp to withstand. Sanity was completely lost. Mass hysteria resulted. Panic prevailed. It was into a concentration camp whose terrorized inhabitants were suffering under the most terrible living conditions imaginable that agents of the Department of Justice stepped to take renunciations.

THE RENUNCIATION HEARINGS.

After setting up the machinery in his Department for conducting renunciation hearings Attorney General Francis Biddle sent his examining agents to the Tule Lake Center in January, 1945, for the purpose of accepting renunciations. Advance announcements of their expected arrival and the purpose of their visit were heralded in the

Newell-Star, the official publication of that Center, **extend-ing** invitations to the internees to renounce. R. 179-180. The agents were John Burling, Charles M. Rothstein, Miss Ollie Collins, Joseph J. Shevlin and Miss Lillian M. Scott. R. 171.

Shortly thereafter the renunciation hearings were conducted in the camp in the very midst of the turmoil and terror. The detention in which the citizens were held was duress in itself. These pseudo-hearings were held behind closed doors by agents of the government which was oppressing them. They appeared singly before the examiners. They were deprived of the benefit of counsel, friends and witnesses. See R. 176-177; and pars. 3 at R. 214, 217 and 220. The examinations proceeded apace, the examiners being aware of the conditions but recklessly ignoring the fact that the hearings of fear-crazed citizens, under the circumstances, was duress in itself. None of the citizens was informed of the irrevocability of an act of renunciation or apprised of the legal consequences of the act. They assumed it was revocable. R. 177-178, 191. The examiners were aware from their actions and words that they were in a deranged mental state and that it was impossible to conduct a "frank and free examination of the renunciant's state of mind". R. 184-185.

Mr. Burling's oral instructions to the examining agents were to make "an effort to detect coercion and to make sure that the legal effect of the act was clear". He also instructed them, so he states, to tell each renunciant that if he did sign "he would forever cease to be an American citizen or to be entitled to any of the rights of citizens and that he would in all probability be returned to

Japan at the close of the war". R. 177-178. However, it is to be noted that his affidavit does not recite that any such thing was told to a single citizen and that none of the affidavits of the examining officers makes any such recital. The affidavits of those officers contain a mere recitation that "Each petitioner was advised fully of the consequences of his proposed renunciation and advised that it was not necessary to renounce in order to be repatriated", that is, to be deported to Japan. Not one person was informed that renunciation was irrevocable or that it would or might result in removal to Japan.

The examiners did not first ascertain whether the renunciants were in their right minds at the time of the hearings. They knew better. None of the confined citizens was informed or apprised of the consequences of renunciation, that it irrevocably deprived them of citizenship and all citizenship rights and authorized their detention converted into internment and final removal to Japan. Even a common criminal entering a plea of guilt to a charged crime where the punishment is a loss of civil rights is entitled first to receive such an instruction from a judge if the basic requirements of due process of law are to be satisfied. *De Meerleer v. Michigan*, 329 U.S. 663. On renunciation the requirement cannot be less because all civil rights and liberties are lost if the renunciation be accepted.

Among the 18,000 aliens and citizens then there interned, including men, women and children, there were approximately 6,714 American citizens of the age of eighteen (18) years and upward. All of the internees then were held in the custody of the W.R.A. and in the

underlying custody of the military authorities. It is to be recalled that at the time that concentration camp was bounded by barbed wire and was patrolled by armed guards while a detachment of military forces kept the camp under constant surveillance. The internees were held under the menacing muzzles of rifles and the constant threat of machine guns mounted in armored tanks. Internal security police were stalking about armed and brandishing clubs. With guns trained on the camp the internees acted precisely as people do when threatened by armed robbers. They yielded up their citizenship. Who, under the circumstances, could have done otherwise?

While so restrained of their liberties eighty (80) per cent of these confined citizens at Tule Lake who were of the age of eighteen (18) years and upward, that is to say 5,371 citizens, in early 1945, signed applications for renunciations of U.S. nationality, all under duress.[14] R. 250-253. In eight other like concentration camps a total of only 151 similarly interned and mistreated citizens signed like applications. The reason there were not more in those camps is to be attributed to the fact that the authorities protected the internees from harm by arresting the development of pressure gangs with the result that the activities of pressure groups in those camps were negligible. No like protection was given at Tule.

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[14]The remaining twenty (20%) per cent, that is to say, 1,343 citizens of comparable age, did not sign applications for renunciation, the reason being that they were employed in the administrative area or were housed in remote blocks where the pressure groups were inactive or had been removed into the fenced off hospital area by the authorities to protect them from the coercion of the pressure groups operating in the crowded inner internment area. Very few were able to withstand or escape the pressure. R. 239, 266.

That there was something radically wrong at the Tule Lake Center is demonstrated by the inordinate number of renunciations there signed compared to the insignificant total of 151 from all other camps where no fewer than 50,000 citizens and 30,000 aliens were held. (The latter figure is made up as follows: Central Utah, 9; Colorado River, 86; Gila River, 26; Granada, 12; Heart Mountain, 1; Manzanar, 8; Minidoka, 7; and Rohwer, 2.) Of these 151 renunciants the males were removed into internment at Santa Fe, New Mexico and the females to Crystal City, Texas, and after the commencement of this suit accompanied family members to Japan or were released from detention and restored to civilian life in this country.

The reasons for the inordinate number of renunciants at the Tule Lake Center was proximately caused by the duress under which that camp was held by the Government and the pressure group leaders and the fear and terror thereby inspired. The failure of the W.R.A. authorities in that camp to protect them against the alien pressure groups and to allay the variety of fears that beset them contributed to the procurement of the renunciations. R. 234-253, 256-267, 316.

In accepting renunciations the Attorney General first made a finding that a renunciation was "not contrary to the interests of national defense" under Title 8 USCA, sec. 801 (i). This was tantamount to a finding that the renunciant was not a threat to our security. It is significant that the letters sent to many of the renunciants by Assistant Attorney General Herbert Wechsler notifying them of acceptance of renunciations recited merely that

the renunciant "no longer is a citizen" and made no mention of continued detention or intended deportation. The Department then took the view that by renunciation a resident citizen was converted into a resident stateless person. It did not then regard them as having been transformed into alien enemies and did not regard them as being subject to removal to Japan under the Alien Enemy Act. Those letters read as follows:

> "You are hereby notified that, pursuant to Sec. 401 (i) of the Nationality Act of 1940, as Amended, and the regulations issued pursuant thereto, your renunciation of United States nationality has been approved by the Attorney General as not contrary to the interests of national defense. Accordingly you are no longer a citizen of the United States of America nor are you entitled to any of the rights and privileges of such citizenship."

Government admits its duress caused the renunciations.

The Government recognized the causative factors which induced the renunciations and states that they were the products of genuine and well-founded fears existing in the citizens' minds at that time. Mr. Burling and Miss Rosalie Hankey summarize the motives, that is to say, the mental fears which prompted the renunciations, as follows:

That a number of the kibei felt "that they had no chance for life in the United States".[15] R. 198. That the

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[15]The kibei have been the most maligned and mistreated group of our Nisei. The name means merely that these citizens have received a portion of their education abroad. It is from the ranks of the kibei that the army recruited a majority of its interpreters and they are in demand with our army of occupation in Japan where a goodly number of those once interned at Tule Lake now are serving.

citizens confined to the "concentration camp" had been taught that "all men, including themselves, were created equal, only to learn that this principle of the Declaration of Independence did not apply to them". R. 199. That in 1942 the W.R.A. gave all the confined citizens a printed notice that they could remain in the centers as shelters throughout hostilities and in 1943 informed them they would be kept there until they were returned to Japan and suddenly, in late 1944 and early 1945 notified them the Center would be closed within six months to a year and they feared they would be forced out into communities hostile to them. R. 198-201, 374, 381. That the internees then feared that it was necessary for them to renounce in order to have their detention converted into internment so that they could remain in the protective custody of the Government. R. 201-202, 373-5, 380. That alien parents, expecting removal to Japan, believed their children would be drafted (R. 202), and that their families would be separated forever and that renunciation was necessary to preserve family unity and hence parental or familial duress was a factor. R. 203, 373. That generalized belief in stories of atrocities committed against relocated evacuees was a factor. R. 204, 289, 381. That upon arrival in Japan it was necessary for them to have a record of loyalty to Japan (R. 204) to insure safety there. That irrational mass hysteria (R. 205-7, 374) resulting from close confinement, want of Caucasian contacts, lack of reliable news and the generalized ravages from racial discrimination that had endured for several years and panic resulting therefrom were factors. R. 205, 373, 391-6, 384, 393, 395; See also, "*The Spoilage*", Ch. XIII, pp. 333-361. The findings of fact on this

duress made by the district court (R. 476-477) are adequately supported by the Government's own affidavits introduced below and, inasmuch as they are not clearly erroneous, they cannot be set aside. See Rule 52(a) R.C.P.

A renunciation induced in a confined citizen by the then well founded fear that he had no chance for life in the United States is not the product of free choice. A renunciation induced by the Government through the fear that he must renounce in order to obtain the protective security of internment by the Attorney General or be forced out of camp to face mob violence is coercion. It is nothing but the giving to the harassed citizen only a choice between Scylla and Charybdis. A renunciation executed to prevent the forcible separation of family members is not a free choice but a coerced one. The fear induced in confined internees through the repetition of stories of atrocities perpetrated upon relocated Nisei and Issei was the natural result of their internment and was well founded.

Renunciations executed to prepare themselves for acceptance by the Japanese upon their forced removal to Japan are not the results of free choice but are involuntary. Renunciations executed to enable citizens to take up the reins of life in Japan in order to evade indefinite and possible permanent internment in the United States are not the results of free choice but are compelled. In consequence, in admitting the foregoing to constitute the decisive factors which caused the renunciations the Government concedes the renunciations were caused solely by Governmental duress.

In addition to the enumerated fears that the Government admits caused the renunciations sight must not be lost of the fact that the interned citizens then and there were the Government created victims of a combination of the following fears: (1) they were impoverished and had no place to go; (2) they feared the community hostility raging against them on the outside; (3) they feared to leave the center and seek shelter in the mid-west because they believed they would never be permitted to return to the west coast; (4) they feared the alien members of their families had to remain in detention in the Center because they were held under the provisions of the Alien Enemy Act by the Attorney General, ostensibly for deportation to Japan; (5) they feared those still excluded from military areas and against whom individual exclusion orders issued had to remain in internment for an anticipated removal to Japan; (6) members of the families of the interned aliens and still excluded persons feared to apply to the W.R.A. to relocate because relocation would separate them from their families remaining in the Center and, perhaps, forever; (7) they did not believe the camp authorities would permit them to relocate but believed that they were being held for deportation and (8) all of them then were held in the grip of terror by the alien pressure group leaders and did not dare to seek relocation. See R. 235-254, 257-267, 297-301, 391-397.

The Government's affidavits demonstrate that the variety of concurrent fears created in all the renunciants' minds by the Government's mistreatment of them alone deprived them of free will and agency in executing renunciations.

The fact that the citizens believed the most impossible things proves they were held in an actual state of terror by the Government and that they were ready to believe anything and everything at the same time. Such states of mind are those of minds terrorized. No renunciation made while in such a state of mind partakes of free will and none so suffering is a free agent. The rule of terror by the leaders of pressure groups was an incident to the Governmental duress and was caused by that duress.

The Fortas letter.

The Fortas letter (R. 75) was introduced into evidence in the District Court below pursuant to the "Stipulation" (R. 408a) and order submitting the cause for decision on the merits which incorporated it as Exh. 2 (R. 75) as part of the Supplement (R. 62) to the complaint which was introduced as an affidavit on the part of each plaintiff below on the motion for summary judgment and on the pleadings. See R. 223 at 224 so providing.

That letter is an official communication written by the Hon. Abe Fortas as Under Secretary of the Interior who, under Secretary of the Interior Harold L. Ickes, was head of the War Relocation Authority and the officer to whose charge all the internees had been committed by President Roosevelt's Executive Order No. 9102. The letter was written concerning matters of great public interest by that officer in the performance of his official duties concerning matters of which he had official cognizance. It was written on Aug. 6, 1945, while each of the renunciants still was in detention. That detention itself was duress. The recitals of the letter are undeniable.

The letter was part of the *res gestae* and it speaks the truth.

Government news suppression policy.

The W.R.A. exhibited all the vices of a temporary federal agency and seemed to possess none of the finer characteristics of permanent federal agencies. It maintained a special publicity staff in San Francisco and in the Center. This skilled staff was adroit in suppressing news of occurrences at the Center and artful in distorting and slanting news in order to preserve the good reputation of the W.R.A. Its chief purpose was to prevent adverse criticism of W.R.A. policies, shortcomings and blunders and to conceal from the public what went on in an American concentration camp. R. 281. The Nazis were doing the same thing in Europe. No news of the terror in Tule was made public. No news leaked out to the public concerning the renunciation hearings. A dark cloud of secrecy was maintained over the whole terrible program. Neither the W.R.A. nor the Department of Justice was anxious to publicize the matter. R. 247, 249. Evidently it is displeasing to oppressors to have the light of publicity focused on acts of oppression.

The W.R.A., finally conscious stricken at the implications arising from what it long had concealed from the public, confessed to the Department of Justice and to the public that the renunciations were products of coercion, duress, menace and undue influence. See R. 193, 207, 250-3, 262.

Incidental internal duress for which Government was responsible was contributing factor to renunciations.

At the time of the hearings approximately 18,000 aliens and citizens with their children were crowded into the Center. They long had been subjected to a course of intimidation by alien pro-Japanese leaders of pressure groups. The W.R.A. officials had permitted those leaders to operate in the Center and to intimidate and coerce the citizens into applying for renunciation. These internees had been committed to the charge of that temporary federal agency. They were wards of the federal Government. The W.R.A. had betrayed its public trust in allowing them to be terrorized. The Department of Justice betrayed its public trust in accepting renunciations from a people terrorized.[16]

Mr. Burling was acutely aware of the coercion at the time. He did not inform the camp authorities of what he saw, heard and understood and did not upbraid them for their irresponsibility in fostering the activities of the pressure groups, for condoning those activities and for

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[16]It is interesting to note that Edward J. Ennis, formerly director of the alien enemy control unit of the Justice Department, apparently somewhat conscience stricken at the part he once played in the evacuation to renunciation program, has been made a member of the board of directors of the ACLU of N.Y. and, since then, has dabbled infrequently in its ineffectual activities. John Burling who succeeded him as director of the alien enemy control unit ultimately became convinced of the gross injustices perpetrated upon this minority, as his affidavit (R. 147-210) reveals and as also disclosed by the fact that he resigned from the Department and subsequently devoted himself to the problems of war refugees and displaced persons. It is to Thomas M. Cooley II, who succeeded him to that office, however, that this minority is indebted. It was largely through his efforts that the compensation law (Act of July 2, 1948, 62 Stat. 1231) and the relief from deportation provisions of 8 USCA, Sec. 155c, as amended July 1, 1948, 62 Stat. 1206, finally were enacted by Congress.

not halting them. It was not within his province to interfere with a federal agency to which he did not belong. He reported "the existence of the very active pro-Japanese movements in the center" to his superiors. R. 169. Later when the renunciation program was in progress he not only mentioned the fact of duress and coercion but did something about it. No other official of any governmental agency had either the courage, the interest or the desire to say or do anything about it. On his own initiative, as a responsible governmental officer, while at the Tule Lake Center, he wrote an official communication under date of January 25, 1945. It was addressed and delivered to Masao Sakamoto and Tsutomu Higashi, the alien heads of the two pressure groups, warning them and their gangsters to stop the coercion of which they were guilty. He had mimeographed copies of this letter posted conspicuously in that Center for all to read and ponder. It was written with the vague hope it might abate the terror. R. 246. That letter reads, in part, as follows:

> "I am well aware that your two organizations have put pressure on residents of this Center to assert loyalty to Japan and that in a number of cases physical violence was employed * * * It is as treasonable to coerce others into asserting loyalty to Japan here as it would be outside. All these activities will stop.
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> "What is intolerable is that the activities of your two organizations continue. Since those activities are intolerable, they will not be tolerated but, on the contrary, will cease."

Those activities did not stop, however. They increased. R. 247. The renunciations were taken by him and his agents when the activities of these pressure organizations were at their maximum intensity and the terror of the internees had reached its maximum height. The public authorities to whose charge the internees were committed did nothing to protect the internees from the terror. They condoned it. No justification whatever could exist for the Department's acceptance of renunciations under these circumstances and its failure to halt the program then and there and to isolate the pressure group leaders and put an immediate and forcible stop to their activities. This was the least the Government should have done in the performance of its duty to protect the internees. The Government, however, was not then interested in protecting them and had not been for a long period of time and does not now appear to be much concerned about the matter.

The situation existing in that concentration camp called for drastic solution to relieve the internees from the terror. Instead of abating it the Government accepted renunciations from the victims of that terror. Though the disease called for radical treatment the surgeons refused to operate. Mr. Burling wrote his letter. A situation requiring strong emergency measures wound up in this feeble gesture. Official apathy, that avoider of decision, sound judgment and wise policy, was all that followed. The W.R.A. maintained a hands-off policy on the renunciation program. R. 244, 262. The Justice Department did not wish to criticize or rebuke the W.R.A. or to interfere with its jurisdiction. The appellees' citizen-

ship was sacrificed in the interim for lack of intelligent action.

The Justice Department transfers the leaders.

After the majority of the renunciation hearings had been held but while some were still in progress the Department of Justice suddenly embarked upon a half-hearted measure to remedy the terroristic rule that prevailed in the Center. It seized the organizers, officers and leading members of the pressure groups and removed them to Bismarck and Santa Fe. These removals occurred between the end of December, 1944, and the first of April, 1945. R. 182-3. Attention is drawn to the fact that it seized many persons who had been forced to join the organizations as nominal members for security reasons only and not because of any sympathy with the aims of those organizations. The seizures and removals were indiscriminate. The W.R.A. obtained a list of purported members by raiding the organizations' offices. That list was a fictitious one containing the names of many internees who were not members. The leaders had added hundreds of names of internees to the membership lists to convince the W.R.A. it was a larger organization than it actually was and to boast to the internees of a much larger membership than it actually had. R. 239, 265. The W.R.A. picked up many innocent persons who were not members and many who were only nominal members and had them removed from the Center by the Department of Justice. All the leaders who were active in the organizations were removed from the Tule Lake Center and other internment camps to Japan during the period

elapsing between November 25, 1945, and February, 1946. R. 183, 254, 266.

Presidential Proclamation No. 2655.

On July 14, 1945, under ostensible authority of the Alien Enemy Act, President Truman promulgated Proclamation No. 2655 (10 F.R. 8947) providing, in part, as follows:

> "All alien enemies now or hereafter interned within the continental limits of the United States pursuant to the aforesaid proclamations of the President of the United States who shall be deemed by the Attorney General to be dangerous to the public peace and safety of the United States because they have adhered to the aforesaid enemy governments or to the principles of government thereof shall be subject under the order of the Attorney General to removal from the United States and may be required to depart therefrom in accordance with such regulations as he may prescribe."

This proclamation referred to the alien enemies mentioned in Public Proclamations 2525, 2526 and 2527 of December 7th and 8th, 1941; No. 2523 of December 29, 1941; No. 2537 of January 14, 1942 and No. 2563 of July 17, 1942, the alien enemies being those of Japan, Germany, Italy, Bulgaria, Hungary and Roumania.

In October, 1945, actual control over the Tule Lake Center was transferred to the Department of Justice. Thereafter, the Attorney General continued to treat the renunciants as though they were alien enemies. He had all of them registered, fingerprinted and photographed

by force. Each was compelled, under protest, in September, 1945, to register as an "alien". The registering officers informed them at the time of registration that they had become "native American aliens".

In October, 1945, the detention of the renunciants became known as internment. The difference is important only from a nomenclature viewpoint. The W.R.A. holds in detention. The Attorney General holds in internment. The dictatorship of the W.R.A. was transformed into a dictatorship of the Attorney General. The executive custody and control persisted. The W.R.A. acted as the managerial agent of the Center for the Attorney General for a short period of time until the border patrol, the police agency of the Immigration Service, appeared on the scene.

Although thousands of the internees sent letters to the Attorney General between February, 1945, and November, 1945, rescinding their applications for renunciation long before they received notices of approval his office recklessly disregarded their letters and insisted upon approving the renunciations even though they had been cancelled. His office sent out hundreds of such notices to appellees after these proceedings had been initiated below. Many of the appellees never have received letters of approval at any time. The Attorney General neither considered nor officially classified any renunciant as being disloyal or dangerous to our security at the time of renunciation although he continued to treat them as though they were alien enemies.

Rescission of individual exclusion orders.

On August 10, 1945, the Japanese Government sued for peace and on Aug. 14, 1945, surrendered on the general terms announced by the Allied Powers at the Potsdam Conference and hostilities ended. Thereafter, September 2, 1945, was designated V-J Day by President Truman. On Sept. 4, 1945, General Pratt promulgated Proclamation No. 24 (10 F.R. 11760) which rescinded all individual exclusion orders which had been issued by army hearing boards that had convened in the Center. It was a blanket rescission of all like orders and was a finding that none of those renunciants against whom such orders had issued was dangerous to our security.

The mitigation hearings.

Thereafter, the Attorney General embarked upon a reckless removal program for all renunciants. He scheduled the first group for deportation to Japan on November 15, 1945. The Justice Department did not anticipate any interference with this oppressive plan.[17] However, these suits and companion proceedings in habeas corpus below

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[17]In 1945 Abraham L. Wirin, erstwhile and sometimes an attorney for the ACLU of Sou. Cal., a branch of the ACLU of N.Y., testified before the Dickstein Congressional Committee that all renunciants should be deported. For undisclosed reasons which, however, are not difficult to guess, he subsequently suffered a change of mind for his name appears on a brief for Inouye, Sumi and Shimizu in appeals Nos. 11830 and 12082 decided by this Court. Just before these cases and the companion proceedings in habeas corpus were instituted in the court below Nanette Dembitz, one time attorney for the Justice Department, prognosticated, in 45 Columbia Law Review 175, 179, that there was not likely to be any litigation over the renunciation program. She, too, has undergone a reversal of opinion for her name appears as an amicus curiae on that same brief. Apparently modern oracles and sibyls are no more accurate in their auguries and prophesies than their prototypes.

intervened on November 13, 1945, and prevented the removal.

When these suits were filed below the Attorney General was detaining for removal to Japan approximately 4,700 native-born Americans of Japanese ancestry in the Tule Lake Center, and in internment camps at Bismarck, N. D., Santa Fe, N. M., and Crystal City, Texas. These suits halted the removal proceedings. Thereafter, administrative orders to show cause before Government examiners selected by him were issued compelling them to show cause why they should not be removed from their native soil to Japan. No such written orders were served upon the renunciants or their counsel. The orders appear to have been in the form of verbal instructions given by him to his agents.

Each renunciant was subjected by the Government examining officers to such an arbitrary administrative examination between the middle of December, 1945, and the first of April, 1946. The renunciants were denied the privilege of being represented by counsel at these examinations. R. 287. They were denied the assistance of friends. R. 303-4. See *Stipulation* dated and filed Jan. 2, 1946, (R. 59) wherein appellees protested the denial of their rights. R. 303. The Government allowed four impartial observers to visit the Center at the time. These were Ann Ray, Catherine Porter and Ernest Besig of the A.C.L.U. of Nor. Cal. and Theodore Tamba, Esq. They were appalled at the contagion of fear they witnessed. R. 287-8, 301-317. These pseudo-hearings were nothing but Star Chamber proceedings. They were perfunctory.

The factors determining whether a person would be released were arbitrarily decided upon and were not revealed to the renunciants. R. 305, 307. The renunciants had no method of obtaining the compulsory attendance of witnesses. R. 303-4. The Government examiners questioned them from material contained in dossiers in the examiners' possession which was not exhibited to them. None of the renunciants was told by the examiners that they were deemed or considered to be alien enemies or that they would be removed to Japan. R. 306. They were informed that if they were successful in the examinations they would be released from detention. R. 306. Evidence was exacted from them, however, by the examiners.

On February 12, 1946, when approximately 1800 of the scheduled examinations had been completed the Attorney General had posted in the Center a list of 449 names of those examined who were said to have received unfavorable recommendations from the examiners. None of those subsequently examined there were added to that list. This fact demonstrates that a release from detention did not depend upon the examinations but upon predetermined factors. Those whose names appeared on that list were denied release and were scheduled for continued detention and removal to Japan simply because they were kibei or their next of kin were in Japan or for other capricious reasons. The hearings were farcical—the recommendations of the hearing officers were of no importance. They were nothing but face-saving devices designed to lend an appearance of fairness and legality to the proceedings. Administrative examinations as conducted by administrative officers leave much to be de-

sired but these conducted by the Attorney General's agents violated all concepts of fairness and impartiality.

However, the Attorney General relented. A review of the files of the 449 did not end on March 20, 1946, when the Tule Lake Center was closed out but continued after they had been transferred to Crystal City, Texas, and thence to Bridgeton, N. J. Since then all of the 449 have been released from detention.

The first intimation that the Attorney General gave that he considered any of the detained renunciants to be dangerous to our security was after the last of the renunciation hearings had been concluded. After these suits had been filed below and the mitigation hearings had been finished the Department of Justice awakened to the realization that its removal program was in violation of its own regulations for want of individual notice to the victims. To justify the illegal detention and threatened removal under the Alien Enemy Act and Presidential Proclamation No. 2655 the Department thereafter sent notices to each detained renunciant informing him that he was an alien enemy scheduled for deportation. No hearing at any time was accorded any of them on the subject of being either an alien enemy or one dangerous to our security. Labeling and classification by fiat is become a practice of executive agencies bred by war.

Since the institution of these suits all the internees have been released from immediate detention and have relocated in civil life in this country.

Of the total number of persons once confined to the various centers approximately 8,100 have been transported

to Japan. This figure includes some 6,800 aliens and their citizen children who were transported to Japan either because of a preference arising from resentment, despair resulting from their mistreatment or simply because they were obliged to accompany aged parents who were impoverished and had no choice except to be repatriated to Japan. The organizers, leaders and moving spirits of the pressure groups in that Center and in the other camps, after the commencement of these suits, were removed to Japan. R. 180-183, 254, 266. The fear which they had inspired in the internees and the terror in which they had held them abated as these Government created fanatics were removed.

SUMMARY OF ARGUMENT.

The renunciation of adult, infant and insane appellees, executed under the provisions of the renunciation statute which was applied exclusively to them upon a discriminatory ancestral type basis pursuant to the special purpose for which it was enacted, during their unconstitutional imprisonment are void for being the products of governmental duress, coercion, menace, intimidation, fraud and undue influence.

ARGUMENT.

THE RENUNCIATIONS ARE VOID.

I.

RENUNCIATIONS EXECUTED TO TERMINATE FALSE IMPRISONMENT ARE VITIATED.

The military commander originally inprisoned the appellees by force and by threats. Even if the evacuation by him could be justified his imprisonment of them and the continuation of that imprisonment by the W.R.A. and the Attorney General could not be. That imprisonment was prima facie unlawful imprisonment. In consequence, there rested upon the appellants, as the imprisoning agents for the Government, the burden of proving it was lawful. In view of the evidence as well as of facts of which the court had judicial knowledge it was impossible for them to sustain that evidentiary burden. See 22 *Amer. Juris.* 421-422, where this rule is stated as follows:

> "The burden of proof in an action for false imprisonment is upon the plaintiff until a prima facie case has been made out. If the plaintiff shows that the imprisonment was by force or threats or without process of law, the presumption arises that the imprisonment was unlawful, and he has established a prima facie case. The burden of proof is then upon the defendant to justify the imprisonment by showing that it was effected under lawful authority. * * * If he does * * * the * * * plaintiff must show something more than mere detention and imprisonment, and he still has the burden of showing illegality."

In view of the foregoing rules it is obvious that the appellants herein could not overcome the presumption of

the unlawfulness and illegality of the imprisonment of the citizen appellees by the military commander in 1942 and the prolongation thereof by the W.R.A. and the Attorney General.

There can be no doubt that the evacuation of our own citizens on a racial basis from eight western states and their imprisonment was unjustified. If mere evacuation was excusable at the precise time it was ordered, as indicated by the Supreme Court in *Korematsu v. U. S.,* 323 U.S. 214, their confinement following evacuation was wholly unwarranted and was unconstitutional as a violation of the due process of law clause of the 5th Amendment. Their imprisonment was a false, illegal and actually a criminal imprisonment. See concurring opinion of Denman, C. J., in *Takeguma v. U.S.,* (C.C.A. 9), 156 Fed. (2d) 437, at 442.

A wrongful imprisonment or a threat renders a contract void if the contract was entered into for the purpose of obtaining a release from the imprisonment or for terminating the threat. See *Weir v. McGrath,* (D.C. Ohio), 52 Fed. (2d) 201, 203, involving duress imposed by statute; *Brown v. Pierce,* 7 Wall. 205, 215; *N. Y. Life Ins. Co. v. Talley,* (C.C.A.-7), 72 Fed. (2d) 715, 718; and 3 *Wigmore on Evidence,* (3rd ed., 815, 822, 824.) See also the rule stated in *Radich v. Hutchins,* 95 U.S. 210. Consequently, whether renunciations were executed to insure internment in order to escape falling victim to mob violence on the outside or to be removed to Japan in order to escape prolonged imprisonment they are involuntary and being the products of duress are void.

II.

THE DURESS VITIATES THE RENUNCIATIONS.

There are several distinct types of duress. Each appellee was the victim of a concurrence of the types. The Government itself was guilty of the duress and the pressure groups and gangs in the Center were guilty of coercion which was an incident thereof. In Sec. 1569, Cal. Civil Code, duress is defined as consisting in the unlawful confinement or detention of a person or of members of his family and also of the confinement of such a person, lawful in form, but fraudulently obtained or made unjustly harassing or oppressive. Those types are the same as those specified at common law, as summarized in 17 *C.J.S.*, 530, secs. 171, 172, as follows:

> "Under the common law doctrine duress of imprisonment arises where a person is actually imprisoned for an improper purpose without just cause, for a just cause without lawful authority, or for a just cause and under proper authority but for an improper purpose."
>
> 17 *C. J. S.* 530, sec. 171.

Under each of these rules the detention of the appellees was duress and their renunciations were void as the product of that duress. Each of the appellees had been imprisoned for four years without hearing on the reason for his imprisonment and without any charges being filed against him. Neither a proper purpose nor a just cause can be found to justify either their original imprisonment back in 1942 or its continuation. Their imprisonment first by a military commander, then by the W.R.A. and finally by the Attorney General without lodging an accusation

against them and affording them trials on the reason and grounds for this terrible punishment inflicted upon them violated the provisions of the 4th, 5th, 6th and 8th Amendments. It was a deliberate attempt of the Government to repudiate all their rights of citizenship and hence of citizenship itself in violation of the letter and spirit of the Constitution. The treatment was cruel, infamous and inhuman and the renunciations were the direct result of that mistreatment. It vitiates the renunciations under the rule that:

> "Maltreatment while under arrest on a well founded charge will invalidate an act produced by such maltreatment." 17 *C.J.S.* 530, Sec. 171.

Even if the original act of evacuation from the western states were to be deemed lawful, while we assert it was both unlawful and criminal, the fact that the detention of the appellees was continued from the evacuation date in 1942 to 1948 was and is duress and the renunciations caused by that illegal imprisonment are vitiated as the result of that duress. The rule is:

> "Although the imprisonment is originally lawful, yet if the party detains the prisoner unlawfully, it is duress." 17 *C.J.S.* 530, Sec. 171.

The Government and the leaders of the pressure groups in the Center were guilty also of another form of duress. It was maltreatment on the part of the Government to imprison the appellees autocratically and deprive them of all their basic rights and liberties in the absence of crime upon their part. That contributed its part in compelling the appellees to renounce. The omission of the

W.R.A. to protect these citizens who were committed to its charge against the activities of the pressure groups leaders constituted maltreatment of these citizens and contributed its part in compelling them to renounce. By maintaining the language schools in the Center for the purpose of preparing them for life in Japan on removal, the W.R.A. led them to believe they would be forcibly deported and this fear of deportation played its part in the renunciations. By fostering those schools which it knew carried on a steady campaign to indoctrinate American children with pro-Japanese sentiments the W.R.A. contributed to their renunciations. These things constituted maltreatment which was duress which vitiates the renunciations.

If the Government had not first evacuated, interned and branded and then repudiated the citizenship and citizenship rights of those persons there would not been any pressure groups and the active leaders of those organizations would not have renounced at the express solicitation of Mr. Burling and would not have been removed between the end of December, 1945, and February, 1946, to Japan, and those organizations would not have terrorized the residents of the Center and there would not have been any renunciations at all. The Government was responsible for the activities of the terrorists. They were irresponsible victims of the Government's oppression. It drove them into a desperate position where they were propelled by the currents of fear to respond in that fashion. That was foreseeable human behaviour inherent in a percentage of oppressed persons. In consequence, it was directly responsible for the existence of

those organizations and for everything those organizations did. They were Government created organizations.

It is to be noted that in *Korematsu v. U. S.,* 323 U. S. 214, the Supreme Court declared the mere act of transferring persons of Japanese descent from the west coast was valid at the time of evacuation because it would assume that at that particular time there may have existed facts then known by the military commander but not revealed by him that might have justified exclusion from given areas as a necessary emergency military measure. That Court, however, took pains to avoid declaring their imprisonment was either justified or lawful. In *Ex parte Endo,* 323 U.S. 283, that Court declared it to be unlawful to hold imprisoned in a W.R.A. Center a citizen who had been found to be loyal. There can be no doubt that "freedom from bodily restraint" is within the due process guaranty. See *Meyer v. Nebraska,* 262 U.S. 390, 399. It is significant that in *U.S. v. Kuwabara,* 56 Fed. Supp. 716, District Judge Goodman declared persons held in the Tule Lake Center as though they were disloyal were held in duress.

The Government itself, through the medium of civilian exclusion orders, threatened the appellees with imprisonment for a violation of those orders and, for obeying those orders, imprisoned them. The W.R.A. continued the imprisonment. The Attorney General into whose custody they passed prolonged their imprisonment and then threatened to remove all of them to Japan and still threatens to remove 292 of them to Japan. This was and is *duress per minas.*

> "Duress per minas arises when a person is threatened with loss of life, with loss of limb, with mayhem, with imprisonment * * *." 17 *C.J.S.* 530-31, Sec. 172.

The alien terrorists in the Center held all of the plaintiffs and all other residents in the Center in a grip of terror by threats against their lives and persons, by threats that if they did not renounce and ask for removal to Japan that when they were deported to Japan they would be arrested, imprisoned, and punished for having opposed the pressure group leaders, movement and objectives. The residents believed those threats would be carried into execution. Their renunciations were executed when they believed in those threats and had good reason to believe in their fulfillment. They are void as being the products of *duress per minas*. See also 5 *Williston on Contracts,* 4533, Sec. 1621, discussing duress by threats of injury.

At common law "duress of the person" whether by imprisonment or by threats, always vitiates consent. See *Odgers on the Common Law,* 3rd ed. Vol. 2, p. 62, citing *Scott v. Seabright,* (1886), 12 P.D. 21, and *Ford v. Stier,* (1896), P. 1, and *Kaufman v. Gerson,* (1904), 1 K.B. at p. 597, declaring:

> "A contract made by a person under duress is voidable at his option. If the will of a party is coerced, it does not matter whether the pressure be physical or moral."

The Government gave these people no chance of release from detention except through renunciation which was

to be followed either by removal to Japan or by prolongation of the internment. That was duress. The rule in equity which vitiates a document executed under duress is aptly phrased in 17 *C.J.S.* 532, Sec. 173, as follows:

> "Under the modern rule now generally recognized a contract obtained by so oppressing a person by threats as to deprive him of the free exercise of his will may be avoided on the ground of duress whether or not the oppression causing incompetence to contract amounts to what was formerly deemed duress at law or merely to the wrongful compulsion remedial in equity."

The evidence offered in the court below by both sides describes the conditions and circumstances which confronted the internees and the combination of real and genuine fears which beset them at the time of their renunciations and which caused them to renounce. They narrate not only the means by which the renunciations were obtained but the then existing state of minds of the renunciants and the fears under which they labored. To set aside an instrument for duress the modern doctrine recognizes that the test does not lie so much in the means by which its execution was compelled as in the *state of mind* that causes it. As stated in 17 *C.J.S.* 534, Sec. 175, the rule is emphasized as:

> "* * * it is the state of mind induced by the means employed—the fear which made it impossible for him to exercise his own free will."

The fact that the Government and its officers or agents may be guilty of duress, menace, undue influence, coercion or fraud which vitiates an instrument is too well established to admit of doubt. See *Brown v. Mississippi,* 297

U.S. 278. As a matter of law, inasmuch as duress was the cause of all the renunciations, a renunciant could not *ratify* the duress and the Government cannot ratify that duress. See 5 *Williston on Contracts*, p. 4348, sec. 1626.

Renunciations obtained by reason of duress possess no more validity than confessions obtained by Government agents by reason of duress. They are involuntary and are the products of coercion. See, *Upshaw v. U. S.*, 335 U.S. 410, invalidating a confession which was induced by illegal detention. See also, *McNabb v. U. S.*, 318 U.S. 322, 324; *Malinsky v. N. Y.*, 324 U.S. 401, 405, and at 407 where it is declared that a document which "was the product of fear" cannot stand; See also, *Ashcraft v. Tennessee*, 327 U.S. 274 and also *Ashcraft v. Tennessee*, 322 U.S. 143, 153; *White v. Texas*, 310 U.S. 530; *Chambers v. Florida*, 309 U.S. 227, 230; *Ziang Sung Wan v. U. S.*, 266 U.S. 1, 10. See also, *Lee v. Mississippi*, 332 U.S. 742, 745, declaring a confession which is the product "of other than reasoned and voluntary choice" is void. See also, 3 *Wigmore on Evidence*, p. 253, sec. 725 et seq.

It is to be noted, also, that the burden of proof rested on the appellants to show that the renunciations were voluntary and were not induced by duress. See 3 *Wigmore on Evidence*, p. 342, sec. 860. The appellants, defendants below, were given adequate opportunity so to do but failed to meet that burden. Obviously, they were unable to prove any such thing. Their own affidavits admitted into evidence below alone prove that all the renunciations were the result of duress. Inasmuch as the facts relating to the renunciations which were conceded by the Government's own affidavits below were irreconcilable

with the existence of mental freedom of the appellees it was the duty of the court below to invalidate the renunciations. See rule stated in *Lyons v. Oklahoma,* 322 U.S. 596, 602.

Mr. Burling's affidavit, R. 207-208, states that the appellees "were confined in a concentration camp at the time they renounced"; that there was existing in that camp "a very high degree of excitement whipped up by organizations admittedly extremely pro-Japanese"; that the renunciations took place at a time when the renunciants and their families "were in extreme fear of being forced out of the Center into hostile communities where they believed their lives would be endangered and that the only way they could save themselves from that danger during wartime was to make themselves eligible for Department of Justice internment." At R. 203 he states the existence of the fear that their failure to renounce would split the families and forever separate them and that this could be prevented only by renunciation. Therefore, the Government admits that the internees had a choice of (1) being cast out from the Center to face the possibility of mob violence on the outside or (2) to renounce and thereby become eligible for internment as protection against lynch law. Obviously, persons held in such great fear would exercise the second choice instinctively. But a choice between two evils is not a free choice. What is especially shocking is that Mr. Burling who presided over the renunciation hearings did not refuse to proceed with the examinations when he realized the fears of the internees. Apparently he was not aware of the fact that this constituted the taking by the Government of a gross

advantage over its wards and that such constituted undue influence and duress by the Government which invalidates those renunciations. Until he first visited the Center neither he nor the Justice Department knew definitely what was going on at that Center although the Department's suspicions had been aroused by the unanticipated and unexplained receipt of applications for renunciations. The camp officers did not enlighten him as to the true condition that had existed in the inner area or colony where the citizens were confined. He heard about the duress, however, from the project attorney. R. 244. The camp officers were not interested in making a complete confession to him of the coercion exerted upon the internees by the leaders of the pressure groups. They were not anxious to inform him that they had allowed the internees to be terrorized.

It was not the Department of Justice which primarily was to blame for what went on at the Tule Lake Center. That blame falls upon the shoulders of the W.R.A. However, Mr. Burling observed occurrences at the Center and was aware of the unrest, fear and danger in which the whole camp labored. He reveals that the W.R.A. knew that the renunciations were the products of coercion and that W.R.A. officials finally notified the Justice Department of that internal duress when they realized a disclosure would not jeopardize their own positions and when their consciences thereby became divorced from self-interest. R. 193, 207. Mr. Burling and his examiners were not entirely deaf or blind to the torment and terror in which the internees were held at the time. Nevertheless, they accepted renunciations because they, too, actually

viewed them as mere Japanese and were apathetic to the predicament of the prisoners. The acceptance of renunciations from a number of citizens who were known to be insane (R. 288, 307-8) demonstrates that apathy and reveals recklessness as well.

III.

THE MENACE VITIATES THE RENUNCIATIONS.

When the appellees were driven into assembly and relocation centers in 1942 the evacuation was completed. Their detention, however, was continued without any of them at any time being given any hearing on the question of the cause or necessity for their detention or removal. A continued detention was forced upon them by the military commander and the W.R.A. Both the forcible evacuation and forcible detention were threats by the Government of imprisoning them for an indefinite period of time. That was menace, i.e., it was governmental duress by imprisonment. See 5 *Williston on Contracts,* 4506, Sec. 1609. In evacuating and imprisoning them the Government branded them guilty of an unknown and unspecified crime and in holding them under duress it publicly branded them criminal and held them up to public ridicule, obloquy and hatred. That was governmental menace. See *Cal. Civil Code,* section 1570, defining menace. The menace played its rôle in causing the renunciations.

The threatened closing of the Center in January, 1945, aroused fear in the internees that they would be thrust into civilian life in communities hostile to them and that

to abate this generalized fear the Justice Department and the W.R.A. agreed to withdraw the announcement of the closing to allay their fears. The W.R.A. failed to withdraw the announcement and, instead, announced the Center would be closed within a year. That announcement alarmed the internees into believing that since "the Department of Justice was thought to have authority only to operate internment camps, it followed that, in order to remain in a camp, it would be necessary for them to become subject to internment as an alien enemy". R. 202. That fear alone deprived them of freedom of choice in renouncing because of their belief that if they refused to renounce they would be driven back into civilian life to face mob violence in communities where hostility raged against persons of Japanese lineage. It is apparent that anyone laboring under such a fear would say anything at a renunciation hearing that would result in an acceptance of that renunciation. It was not to be expected that such a person will state he was renouncing because of that fear when, by so doing, he might be forcibly ejected from the camp only to succumb to the mob violence he was seeking to escape.

IV.

THE UNDUE INFLUENCE VITIATES THE RENUNCIATIONS.

The Government also was guilty of undue influence in obtaining the renunciations. Undue influence consists in the use by one who holds a real or apparent authority over a person of that authority for the purpose of obtaining an unfair advantage over him either by taking an unfair advantage of another's weakness of mind or in

taking a grossly oppressive and unfair advantage of another's necessities or distress. See *Cal. Civil Code,* sec. 1575; and 17 *C.J.S.* 539.

The Government evacuated and detained all the appellees and treated them as though they were alien enemies. It exercised an authority over them which was not only real and apparent but was absolutely autocratic. Without reason and without affording them hearings it detained them for years without a chance of being liberated. It cast them into the Tule Lake Center. It held them there. It let them be subjected to the undue influence and coercion of the pressure groups. It afforded them no protection against those groups. It conducted renunciation hearings in that concentration camp while the internal terror was raging. The Government was aware of the fact that they were living in an abnormal state of fear and that they were tormented and terrorized. With full knowledge of the conditions and of the tortured minds of the internees the Government took a grossly oppressive and unfair advantage of their necessities and distress in taking their renunciations. The Government's affidavits admit these conditions existed before and while the renunciation hearings were being held. Although undue influence is only a comparatively mild form of duress, it is, nevertheless, an adequate ground for cancellation of an instrument executed thereunder. See 5 *Williston on Contracts,* p. 4495, defining duress as the extreme of undue influence.

All the internees were under the dominion and control of the Government at the time of renunciation. They were wards of the Government. All of them were

under the dominion of the pressure groups at the same time. The Government and the pressure groups were guilty of exercising undue influence in procuring those renunciations. Documents executed under such an influence are involuntary and invalid. An excellent definition and description of undue influence is set forth in 5 *Williston On Contracts,* pp. 4541-4542, sec. 1625A. It cites the definition made by Lord Selborne, L.C., in *Earl of Aylesford v. Morris* (1873), 8 Ch. App. 484 at 491, which has found general acceptance in Anglo-American jurisprudence. That decision defines it as any

> "unconscientious use of the power arising out of these circumstances and conditions; and when the relative position of the parties is such as *prima facie* to raise this presumption, the transaction cannot stand unless the person claiming the benefit of it is able to repel the presumption by contrary evidence, proving it to have been in point of fact, fair, just and reasonable."
>
> "But it is sufficient for the application of the principle, if the parties meet under such circumstances as, in the particular transaction, to give the stronger party dominion over the weaker; and such power and influence are generally possessed, in every transaction of this kind, by those who trade upon the follies and vices of unprotected youth, inexperience and moral imbecility."

None of the appellees was represented by counsel at the renunciation hearings. None had a chance to obtain such representation. None had the benefit of independent legal advice on the matter. All were deprived of the benefits of such representation. All were in a concentration camp at the time. All were held in duress. All were the victims

of the undue influence of the Government and the pressure groups. It was in the *Earl of Aylesford* case, supra, pp. 490-1, and quoted in 5 *Williston On Contracts,* in note at 4542, that the rule was established that the undue influence which vitiates an instrument executed by a person dominated by another in the absence of independent legal advice is something more than mere fraud. It declares:

> "Fraud does not here mean deceit or circumvention; it means an unconscientious use of power arising out of those circumstances and conditions * * *"

A document which is executed by a person held in custody who has been denied the benefit of counsel is involuntary and the product either of undue influence or outright coercion and is void for duress. See *Von Moltke v. Gilles,* 322 U.S. 708, 715; *Malinsky v. N. Y.,* 324 U.S. 401, 405; *White v. Texas,* 310 U.S. 530, and *Chambers v. Florida,* 309 U.S. 227.

Inasmuch as the relationship of dominance over the appellees by the Government existed at the time of renunciation, there is a presumption that the Government was guilty of undue influence. Consequently, the burden of establishing that the renunciations were the free acts of the appellees rested upon the Government. See 5 *Williston On Contracts,* p. 4542, in note to Sec. 1625A, stating that this presumption was decided in early English cases to be irrebuttable, and citing and quoting from *Liles v. Terry* (1895), 2 Q.B. 679, where it is stated:

> "It was formerly thought in England that the presumption was irrebuttable in the absence of competent and independent advice."

As Williston there points out the rule was partially relaxed in *Noriah v. Omar* (1929), A.C. 127 (P.C.) noted, (1932), 173 L.T. 149, holding that rebuttal evidence should not be disregarded "simply because the donor did not receive independent legal advice".

The appellees herein, however, were deprived of the right to counsel and to independent legal advice at the renunciation hearings as a matter of governmental policy and the dominance that the Government maintained over them at the time was complete and absolute. The Government knew that they were not in their right minds and that they could not have been because of their despair arising from their prolonged internment without the possibility of release. It knew of their fears of deportation, of outside hostility and of the splitting of their families and of pressure group violence. There exists no possibility whatever of the presumption of undue influence being overcome by the appellants. In its affidavits and its answer the Government admits the undue influence. The renunciations, therefore, are void as the products of that undue influence.

V.

THE FRAUD VITIATES THE RENUNCIATIONS.

The Government was guilty of deception in its treatment of all the appellees. It was guilty of *actual fraud*. It evacuated all of them. It concealed from them that by evacuation the military commander intended not mere evacuation from the vicinity of military installations but imprisonment in concentration camps. It kept them im-

prisoned. Having led them to believe they would be evacuated to areas where they would be free to follow their civilian pursuits it incarcerated them in prisons. Knowing that the internees feared the community hostility raging against them outside the Tule Lake Center and that they feared the Government would cast them out of detention and force them to fall victims to mob violence in hostile communities, the Government accepted their renunciations so that they could escape that hostility by becoming eligible to remain in the protective custody of the Government-controlled Tule Lake Center. It concealed from them the fact that its protective custody would be protracted until the Government found the time and means to remove them to Japan as though they were hostile alien enemies. The execution of the renunciations, in consequence, was pursuant to a suppression of knowledge of the fact the Government intended to detain and remove them to Japan if they renounced or to eject them so they would fall victim to mob violence on the outside if they did not. This constituted actual fraud perpetrated upon these citizens by their own Government. See *Cal. Civil Code,* sec. 1572. Moreover, it was duress.

The mistreatment inflicted upon the appellees also included constructive fraud by the Government. Each citizen was entitled to fair treatment by the Government and to freedom from discrimination. None received either of these at any time. Each was entitled to be informed of the consequences of renunciation which the Government intended to put into operation upon approval of the renunciations. Not one citizen was told of the irrevocability of the act of renunciation. Not one was told

that the Government would view the act of renunciation as an act transforming the citizen into an alien enemy. Not one was told that renunciation was intended to result in or that it would result in his or her forcible removal to Japan. These facts were concealed from the citizens. If the Government at the time of renunciation did not view the act as one converting the renunciant into an alien enemy which would be followed by removal to Japan it is obvious that none of the examiners told any of the citizens about even the possibility of such consequences to renunciation. They could not have done so because such was not then even in the Government's contemplation. They would have been presumptuous to have informed any of the citizens of matters on which the Attorney General himself had not expressed an opinion.

It is tragic to think that these examinations were conducted by the Government when, as Mr. Burling's affidavit (R. 188) states, "It was universally agreed that the rush toward renunciation was illogical and unreasoned" and that

> "It was a commonplace witticism among the officials of the Center at the time of these hearings that the population of the Center was largely mad and that the Center might properly be taken from the management of the War Relocation Authority and transferred to the Public Health Service to be run as a species of mental institution".

What he saw was a form of generalized insanity induced by fear caused by the internment, the hopelessness of their situation, their despair, the terror that reigned against them in the Center and the terror that raged

against them on the outside and the apathetic attitude of the W.R.A. towards them and its failure to protect them. What other behaviour would one expect of citizens held in terror for months and years? The Tule Lake Center was a fear-crazed concentration camp at the time of the renunciations. What the Department of Justice actually did was to obtain renunciations from inmates interned in a large mental institution.

Mr. Burling expressed his hearsay opinion that none of the renunciants asserted "he was being coerced into renunciation". R. 207. Persons in terror never mention terror at the time. Insane people do not conduct themselves as rational beings. What the herd does all do. Insane people don't admit their insanity. They act it. Only the blind fail to notice mental instability, fear and terror. The oppressor neither notices nor becomes aware that his own conduct is oppressive—the oppressed are too disturbed to analyze their emotions or rationalize.

However, each and every appellee, so soon as he was assured of some protection, revealed that he was coerced into renunciation. When counsel for the appellees visited Tule he was consulted by a number of these terrorized internees, advised them of their legal rights—informed them that if the W.R.A. did not relieve them from the still active terror that the dereliction of the officials responsible would be publicly exposed. R. 253. Thereupon thousands of letters rescinding the renunciations were mailed to the Attorney General.

VI.

DENIAL OF DUE PROCESS AT RENUNCIATION HEARINGS VITIATES RENUNCIATIONS.

At these hearings, held in prison, each appellee was deprived by the Attorney General of the benefit of counsel, and of all of the incidents of a fair and impartial hearing. Each was deprived of the benefit of independent advice of friends. The hearings were not open hearings. They were casual, brief and perfunctory. R. 177, 178. Each renunciant was examined separately in a closed room where he was closeted with agents of the Government which had tortured him, harassed him and still detained him. These were Star Chamber proceedings. They were inquisitions. None were allowed to have friends present. None were informed of their rights. None had any rights that were recognized. Each long had been despoiled of all rights. None were informed by the Government examiners or any one else of the irrevocability of the act of renunciation or of its significance and none was apprised of the consequences. This, in itself, was a denial of due process of law guaranteed by the 5th Amendment. See *DeMeerleer v. Michigan,* 329 U.S. 663; *White v. Texas,* supra; *Malinsky v. N.Y.,* supra.

Punishment inflicted for crime deprives one of certain civil rights. Renunciation, as interpreted by the Attorney General, deprives one of all civil rights. A person charged with crime where the penalty is a loss or suspension of civil rights is entitled under the 6th Amendment and the due process clause of the 5th to a fair and impartial judicial trial before he may be deprived of the enjoyment of those rights. It follows that because renunciation pun-

ishes a person by depriving him of all civil rights that he is entitled at a renunciation examination to a fair and impartial judicial or administrative hearing in order that the minimum requirements of due process of law be satisfied before he can be deprived of those rights and that neither the Executive nor Congress may dispense with those requirements.

Common criminals about to plead guilty in a judicial proceeding to charges of crime which results in the loss of civil rights are entitled to reecive an instruction from the court on the irrevocability of a plea of guilt and the significance of that plea and the nature of the punishment provided therefor when they are not represented by counsel of their own choosing or court appointed. Such an instruction is a traditional and fundamental part of due process of law. Were it otherwise we would be living in a police State such as were Germany and Japan and such as is the Soviet Union. In addition to such an instruction it is the duty of a court, under Anglo-American concepts of due process, to make certain that the defendant is free from menace, intimidation, undue influence and duress at the time his plea is entered. It is to be noted that an accused person has been allowed the privilege of bail and access to the services of counsel and to the assistance of friends. At the time of his appearance in court he either has been bailed or has had the opportunity to be bailed and is not under duress. Here none of the citizens had access to the services of counsel or the assistance of friends. None was given any chance of being bailed. Each was constrained of his liberty and had no avenue of liberation open to him except to renounce either

to be ordered interned to escape lynch law or to be removed to Japan to escape permanent imprisonment. Each was held under duress.

Renunciation hearings, as applied by the Attorney General, were intended to result in the renunciants' detention to be followed by their removal to Japan before or after the end of the war. These significant facts were concealed from the renunciants. None was informed of the irrevocability of renunciation or that it would result in detention for the duration of the war or removal to Japan at or before its close and none had any knowledge of any such thing or the means to acquire any such information. If that was the purpose and intent of the Attorney General in accepting renunciations it was kept absolutely secret from the renunciants. Those renunciation hearings, therefore, were nothing but mock hearings on verbal *lettres de cachet* issuing from the Attorney General.

VII.

CONSTITUTIONAL QUESTIONS INVOLVED.

The constitutional issues involved herein which are not specifically discussed herein are contained in our brief filed in the companion appeal proceedings Nos. 12,195-6 in habeas corpus.

CONCLUSION.

The unbelievably cruel program that was instituted against our citizens of Japanese lineage by a military commander in 1942 has been perpetuated against a number of

them to the present time by federal agencies. It has been a form of war we have waged against them simply because of the geographical origin of their forebears.

Not content with ousting them from their homes and confining them to concentration camps and enslaving them, and enslaved they were, the government endeavored to deaden their minds and destroy their spirits. It nearly succeeded in Tule. The human spirit, however, is not a product of the government but a thing of God that defies oppression. The measure of a man is not by pigmentation. The value of a citizen does not lie in his color. These people bore their cross uncomplainingly. Many were resentful of their mistreatment but they suffered in silence in the hope and belief that their acquiescence in doing what the government commanded would produce a change in the government's attitude toward them. They did not know the government. It was official enmity toward them that caused them to be mistreated and it was public apathy that enabled the government to do it.

Having inflicted the gravest type of injury upon these people the government sought to justify its evil in characteristic manner. It tried to brand them disloyal while declaring its own innocence. It blackened their reputations while whitewashing its own. Robbing individuals of their good reputations apparently is not a crime when it is done by the government.

The spirit of brute force hovers over the land and evil practices are tolerated, sanctioned and justified because those who command the force easily confuse and delude us by trading upon our fears, our ignorance and our indifference. What happened to these citizens was brutal. We are asked to believe that brutality is its own justifi-

cation. It is a strange philosophy in which we are asked to put our faith. Citizens are become anvils upon which the government must hammer. The products are—what one would expect of such relentless pounding. Is the government ashamed of the creatures of its own forging that it subjects them to this abuse? Is it to be allowed to punish them for what it has done to them and for what it drove them to do?

The oppression of these American citizens is the most incredible outrage in the annals of the nation. That it becomes necessary for this court to pass upon the issues herein is proof of the relentless campaign of terror waged for eight long years by the government against an oppressed minority whose only crime consisted of being—American citizens. What these have borne uncomplainingly and in silence reflects discredit upon the federal agencies responsible. For the suffering they have endured they deserved more consideration and received less than any group within the life span of the Republic. The injury done to these citizens is an injury done to all citizens. It is a pity that those who inspired the persecution of these citizens and those who condoned it do not wear externally the mark of dishonor they bear internally that their guilt be apparent and they become objects of scorn to all lovers of human dignity, justice and liberty.

The judgments below should be affirmed.

Dated, San Francisco, California,
February 27, 1950.

Respectfully submitted,
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